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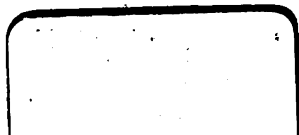
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THE INSTITUTES
OF
THE LAW OF NATIONS

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“Dicitur ergo humana lex quia proximè ab hominibus inventa et posita est. Dico autem *proximè*, quia primordialiter omnis lex humana derivatur aliquo modo à lege eterna.”—SUÁREZ, *De légibus et Deo Legislatore*, L. I. c. iii. § 17.

THE INSTITUTES
OF
THE LAW OF NATIONS

A TREATISE OF THE
JURAL RELATIONS OF SEPARATE
POLITICAL COMMUNITIES

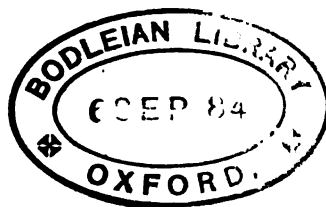
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IN TWO VOLUMES

VOL. II.

WILLIAM BLACKWOOD AND SONS
EDINBURGH AND LONDON
MDCCCLXXXIV



PREFATORY NOTE.

THOUGH I have every reason to thank the Press and the Public for the indulgent reception which has been accorded to the previous volume of this work, no criticism of its contents has come under my notice which seems to call for any special reply. In one of the latest reviews of it, the writer, speaking in the name of English jurists, says, "If he," the author, "could convert us to his own sturdy belief in the Law of Nature, we should feel that he had swept away half the difficulties of the subject."¹ I more than reciprocate his sentiment, because to me it is obvious that, apart from Natural Law, all true knowledge of anything is not only difficult but impossible. Nature is the goal of science, in jurisprudence as in every other department of inquiry; and the jurist who does not believe that the human relations are governed by laws that have a deeper

¹ *Academy*, January 12, 1884.

source than human will, has no *terminus ad quem*, and is not in a condition even to set out on his scientific journey. Whilst such is our attitude, it is not surprising that the investigators of nature in other directions should despise us; that even our own self-respect should be shaken; and that, whilst legislation is honoured as the highest function of the citizen, and the profession of the law enjoys every consideration, the Science of Law should hang its head, and the Faculties of Law in our Universities, where we have them at all, should drag ignominiously at the tail of the academical system. Against this condition of affairs I have made it the chief occupation of my life to protest; and now that I am approaching the close of my labours, my only regret is that I have not protested with greater earnestness and power.

It has sometimes occurred to me that the exceptional position of English jurists in this matter may be more apparent than real, and may have arisen from an unhappy accident which has checked the progress—or at all events the conscious progress—of jurisprudence in England along the lines which it has followed in Continental countries. Neither Bentham nor Austin received a learned education as jurists, however it may have stood with them in other respects, and they had no acquaintance with mental philosophy. It was, consequently, in the popular and sentimental sense of a

primitive code of consuetudinary law, existing in an imaginary state of nature, to which Rousseau had given currency, and not in the ethical, jural, and theological sense of law which "is intrinsic and essential to a rational creature,"¹ that they understood natural law. In this, as in all other respects, they have been loyally followed; and the natural law against which so much argument and so much wit has been directed in England during the last half century, has consequently been the natural law of the French Revolution, and not the natural law of the Grotian Jurisprudence or of any Scientific Jurisprudence at all. Aware of the fatal character of this misconception, I have done my best to remove it on several occasions; but it was too deeply rooted to be plucked up by any feeble efforts of mine.² Apart from my poor services, however, I rejoice to find that there is hope for the English school. The same writer informs us that "much is being done to improve on Austin," and when Austin has been finally improved away,—unless some new "Mahdi" should arise, or the old "fad" of *utility* should again be drawn across their scent,—I cannot doubt that a generation of jurists who have had the courage to abandon the long-cherished distinction between law and equity, will find their way by the ordi-

¹ Culverwell.

² See in particular *Institutes of Law*, Preface to Second Edition, and Introduction, pp. 1-17.

nary means of subjective and objective induction¹ back to the path of ethical consciousness,—what we in Scotland call “Common-Sense,”—by which the rest of mankind have been led to the fountain of nature.

A few words of explanation, if not of apology, may possibly be in place with reference to the Appendix, which is of greater extent than I at first contemplated, and the preparation of which has delayed the publication of the volume. I felt that, in order to enable my readers to judge of my strictures on the existing laws of war and neutrality, they were entitled to demand of me that I should place those laws before them in greater detail than I had done in the text, and that I could do so satisfactorily only by reproducing the official documents in which they are embodied. No body of instructions for the government of our armies in the field has yet been issued in this country, and as its preparation can scarcely be much longer delayed, I thought it desirable to bring to the knowledge of the public what had been done in the matter in other countries. As regards our neutral legislation,—whether the Foreign Enlistment Act of 1870 be remodelled on the principle of giving greater freedom to neutral citizens and to neutral trade, which I have advocated, or in the opposite direction of forbidding neutral trade altogether,—I cannot believe that an enactment that hurls fine and imprisonment—

¹ *Institutes of Law*, p. 45 *et seq.*

or “either of such punishments, at the discretion of the Court; and imprisonment, if awarded, being either with or without hard labour”¹—against some half-dozen *mala prohibita*, which public opinion does not recognise as *mala in se*, can remain long on the statute-book; and when it comes up for discussion in Parliament, politicians and publicists, as well as students, will find it convenient to have it within easy reach.

For the documents prepared by the Institute of International Law, with a view to the negotiation of International Treaties, I need offer no apology. Hitherto they have appeared only in the official publications of the Institute, and in its organ, the ‘*Revue de Droit International* ;’ and as these sources of information are not likely, I fear, to be generally in the hands of my readers, they will thank me, I am sure, for making the valuable labours of the Institute thus accessible to them. For the lists of events, and of international writers, with which the Appendix concludes, I have to thank two friends, to whom I have been much indebted in other respects. The list of events has been prepared by Mr Kinnaid Rose, advocate, whose experience as a journalist has enabled him to supply much information which others can procure only at the cost of labour which they are seldom willing to bestow; and the list of writers is the work of my colleague of the Institute,

¹ Appendix XII., p. 490.

M. Ernest Nys, whose valuable contributions to the history of the Law of Nations have secured for him an honourable place among scientific jurists.

Lastly, I have to thank my colleague of the University, Professor Kirkpatrick, for the assistance which on this, as on former occasions, he has so kindly given me in correcting the press,—assistance on which I am exceptionally dependent, and which his accurate scholarship and critical faculty render him more than usually in a condition to lend.

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ADDENDA ET CORRIGENDA.

- Page 10, line 9, *for* "that justifies" *read* "demands."
- " 59, line 19, *for* "its attainment" *read* "the attainment of its
object."
- „ 112, line 16, *for* "affected" *read* "effected."
- „ 159, line 17, *after* "Germany" *insert* "1" *and delete it from*
line 20 after "Westlake."
- „ 159, line 20, *omit* "drawn by Mr Westlake."

BOOK IV.

OF THE ABNORMAL JURAL RELATIONS OF
POLITICAL ENTITIES

Ἐν ἀρχῇ ἦν ὁ λόγος (*reason, right*), καὶ ὁ λόγος ἦν πρὸς τὸν θεὸν (*omnipotence, might*), καὶ θεὸς ἦν ὁ λόγος (*and might WAS right*). . . . Πάντα δι' αὐτοῦ (*right*) ἐγένετο, καὶ χωρὶς αὐτοῦ ἐγένετο οὐδὲ ἓν ὃ γέγονεν. Ἐν αὐτῷ ζωὴ ἦν, καὶ ἡ ζωὴ ἦν τὸ φῶς τῶν ἀνθρώπων καὶ τὸ φῶς ἐν τῇ σκοτίᾳ (*the abnormal relations*) φαίνει, καὶ ἡ σκοτία αὐτὸ οὐ κατέλαβεν.—JOHN i. 1, 3, 4, 5.

“Ratio ipsa, inquam, ratio (ὁ λόγος) est juris gentium anima (ἡ ζωὴ τὸ φῶς τῶν ἀνθρώπων).”—BYNKERSHOEK, *Quaestiones juris publici*, 1737. lib. i. cap. 2.

THE
INSTITUTES OF THE LAW OF NATIONS.

CHAPTER I.

OF THE ABNORMAL JURAL RELATIONS IN GENERAL.¹

AN abnormal jural relation seems at first sight a contradiction in terms, because normal and jural are synonymous expressions—what is normal is jural, and what is jural is normal; and nothing, consequently, can be abnormal without being anti-jural. Such must, no doubt, be our conclusion absolutely—that is to say, when we carry the sources of jurisprudence back to the cosmic conception of the universe.² But relatively—viewed, *i.e.*, in relation to the universe as it phenomenally presents itself, and to the actual life of man—the case is different. Humanity comprises within itself elements which, so far as we can trace them, are not only at variance with its general tendencies and fundamental characteristics, but are contradictory and self-destructive. And

¹ The distinction between normal and abnormal relations has already been pointed out, *ante*, vol. i. p. 223 *et seq.*

² *Ante*, vol. i. pp. 7 and 225.

revelation leaves this illogical and suicidal mystery where philosophy abandons it.¹

Humanity, apart from all diversities of race or stages of development, has its abnormal and illogical, as well as its normal and logical side—its side in which it is out of harmony, as well as its side in which it is in harmony, with the scheme of the universe—ὁ λόγος—and with itself; and as jurisprudence is a declaratory science,² it must accept the facts of humanity as humanity reveals them. Though professing to reach the facts of consciousness, it does not profess to penetrate the mysteries of existence, and it is contented to recognise and make provision for what it can neither explain nor approve. In passing from the study of the normal to that of the abnormal relations, we thus pass, as it were, from jural physiology to jural pathology.

But jurisprudence is, moreover, a science of therapeutics. It is with a view to their removal that it studies the phenomena of disease; and when viewed as an art, the object of jurisprudence is always to bring the abnormal to the normal, the irrational to the rational, the relative to the absolute. It is on this ground that positive law, which embodies the concrete results of jural science, repudiates all abnormality which, as regards the creaturely will, is not inevitable. It is the *minimum* only of an abnormal relation that is jural: it continues jural only so long and so far as it continues inevitable: and its annihilation is thus the only object of its jural recognition. It is jural only whilst it possesses the character of the "error" which jurisprudence recognises in order that it may subdue.

¹ Romans vii. 15-23.

² *Institutes of Law*, 2d edition, p. 255.

In dealing with what is thus as it were the night-side of human nature—ἡ σκοτία—the method which jurisprudence pursues, however, continues unchanged. It seeks to make the crooked straight, and to vindicate freedom by perfecting the relations which it recognises. This realisation of the abnormal relations, unlike that of the normal relations, is, as we have said, only transitory. The relations themselves, as they have no absolute justification, have no abiding *raison d'être*. What is necessary, and, as such, right to-day, may be unnecessary and wrong to-morrow, whereas what is right intelligibly is right eternally. It is thus only conditionally and transitorily that necessity takes the place of right.

But necessity, whilst it lasts, is a jural warrant for the vindication as well as for the recognition of the abnormal relations. It justifies the unimpeded action of the forces which these relations call into play up to the point at which, by the exhaustion resulting from this action itself, the necessity for its continuance is removed. The moment this result is obtained, an abnormal relation—war, we shall say—loses its hold on jurisprudence altogether. Ceasing to be a jural relation, it becomes an anti-jural relation, which is, of course, always abnormal. Its abnormal character remains, but its jural character vanishes; its recognition becomes an error, and its vindication a crime. Jurisprudence throws it off just at the point at which a physician discontinues the use of a poisonous drug, or a prosecutor refuses to accept the evidence of an accomplice in crime. The proverb that “necessity has no law” is thus true, not only of that divine and absolute necessity which “was in the beginning”—ἐν ἀρχῇ—and is

the source of all law, but of that human and relative necessity which is the source of those ephemeral laws by which human beings seek to combat their own errors and crimes by making provision for them. *Vis major*, whilst it lasts, has the same claim to obedience as *vis omnipotens*, over those to whom it is *vis major*. To them it is *vis omnipotens*, in which, for the time being, reason and power coincide,¹ and right is identified with might. But, till we intellectually recognise its character as absolutely irresistible, we are bound by our reason to resist it. We must give way only when we feel satisfied that to strive longer is to strive against God, and that we are throwing away the means which He has given us for His service, because He will not permit us to employ them in our own way.

The ultimate question whether, or to what extent, the abnormal relations may be separable or inseparable from the life of man upon earth, mounts into regions of theology and ethics which altogether transcend the science of jurisprudence. The jurist has no more to do with it than the physician has to do with the question of the possibility or impossibility of the ultimate removal of physical disease. In the presence of war and pestilence both may well cry, "O God, how long?" but neither is permitted to wait for the answer. If man be but "a little lower than the angels," we cannot tell what "the providence which shapes his fate" may have in store for him. But, hoping all things, our plain duty for the present is humbly to accept the facts of nature, physical and moral, as they are presented to us, and to cope with its imperfections, so long as

¹ *Institutes of Law*, p. 427.

they are not obviously beyond the reach of human will and human power. History unfolds to us many a dark and blood-stained page, but if we read our poor human story carefully and reverently, we shall find nothing in its general tenor which cuts us off from possibilities that transcend the loftiest aspirations of optimism. Enough has been effected to prove to us that the abnormal forces which spread death and destruction around us are under the control of the human will to an extent which, for the present, is quite incalculable. To look only at the material side of the problem: it is not *impossible* that, by a general effort of that rational will which is the meeting-point between right and might, in the direction of international organisation, future generations may be able to set free, for purposes of direct progressive development, those enormous resources—exceeding in this country, as Mr Bright tells us,¹ four-fifths of its whole expenditure—which are now devoted to war and preparation for war. The world would then become “rich beyond the dreams of avarice;” and though it is most true that “the gift of God is not to be purchased for money,” that is no reason, surely, why the *chief* object to which we devote His bounty should be the destruction of one another. The tendency of knowledge and wellbeing is to check that thoughtless and reckless multiplication of the human species which is one of the causes of disease and suffering; and we need have no suspicion that even if we were to apply the bewildering sum of “four thousand four hundred and fourteen millions sterling,” which we are said, by the same authority, to have spent on war

¹ *Glasgow Rectorial Address*, 22d April 1883.

since the beginning of the century, to the reduction of taxation, the advancement of science, and the promotion of education, we should be increasing either the magnitude or the difficulty of the problems with which Government has at present to deal. The anarchical forces, which occasionally manifest themselves in forms so alarming as to threaten civilisation, are begotten, not of health and wealth, but of disease and starvation. Whether the over-caution which wellbeing is said to engender might not tend to limit that supply of surplus population, by which the unappropriated regions of the globe are being replenished, and whether even the vices of the Proletariat may not thus have their uses, is a question which one is sometimes tempted to ask. But, even as regards productivity, the limitations imposed by providence and self-respect could scarcely equal the waste of war and preventible disease, whereas the quality of the population, both physical and moral, would certainly be improved by the substitution of the former for the latter, as checks on over-rapid increase. Those who were born would be stronger, healthier, and longer lived when the debilitating, corrupting, and degrading influences of poverty and ignorance were removed, and when the flower of each generation ceased to be cut off by war before they had had time to become husbands and fathers. Progress might still be intermittent,—and so long as the study of its ethical and jural conditions is pushed into the background by the study of its material conditions, it must necessarily be slow,—but it would be both steadier and more rapid when the advancing host was recruited mainly from those who were capable

of self-support and self-control. One of the causes of the lop-sided character of our present intellectual activity is no doubt to be found in the urgency with which material problems are still pressed upon us by physical wretchedness.

When we contrast the death-rate of our urban with that of our rural districts, and reflect on the rapidity with which, not in this country alone, but almost everywhere in Europe, the rural populations are being driven into the towns by causes which are not beyond our control, we feel that it would be inhuman to turn to any other subject whilst thus standing beside the open graves which we have dug for our own children. In comparison with the ceaseless ravages of the *morbis urbanus*, the waste even of war sinks into insignificance.¹

CHAPTER II.

OF THE ACTIVE ABNORMAL JURAL RELATIONS.

Within the sphere of the normal relations, we have seen that proximate will cannot jurally be constrained in behalf of ultimate will, for the very obvious reason that there, *ex hypothesi*, it is in accordance with ultimate will. Jurispru-

¹ "For every 10,000 of estimated population in the principal towns of Scotland, the deaths were at the annual rate of 264; in the large towns the rate was 210; in the small towns, 192; in the insular-rural districts, 186; and in the mainland-rural, 163. In Glasgow the death-rate was 320 per 10,000 inhabitants; in Dundee and in Greenock, 273; in Paisley, 255; in Leith, 227; in Perth, 221; and in Edinburgh and Aberdeen, 195."—*Report of Registrar-General for Scotland for the quarter ending 30th June 1883*, p. 3.

dence, consequently, enjoins every separate entity to abstain from interfering with every other,¹ and passive take precedence of active relations. But the reverse is the case when we enter the sphere of the abnormal relations. Here proximate will is already in conflict with ultimate will; and active relations, ethically, and, as a necessary consequence, jurally, take precedence of passive relations. It is only they that are sick who need the physician, but the existence of the need that justifies his interposition. The object of the jural recognition of an abnormal relation, being the removal of the conditions which have given rise to its abnormality, nothing short of inability to act can justify inactivity. It is only when we cannot help it, that we are at liberty to let ill alone, and that we may blamelessly abandon either our own cause or the cause of our neighbour. If A. is barring B.'s way, or even impeding his march towards the realisation of his ultimate freedom, B. is not only entitled, but bound, to clear his own way of him *if he can*, even at the cost of A.'s proximate freedom. If A. and B. are injuring or hindering each other, C. must prevent them *if he can*, even at the cost of the proximate freedom of both of them. Each separate rational entity must act in behalf of his own or his neighbour's real and ultimate freedom, and consequent perfection, even at the cost of encroaching on his own or his neighbour's proximate and phenomenal freedom. He must go forth to battle, and spend and be spent for his own and his neighbour's freedom, up to the point at which his present activity is counteracted by the expenditure of the means of future action, or

¹ *Ante*, vol. i. p. 231.

of action in another direction, which it involves. When this point is reached, submission, in his own case, and neutrality in his neighbour's case, are warranted by the same considerations which justified the active assertion or active defence of subjective or objective freedom. States, like individuals, must, then, be contented to hope for the best, and strive to master the hard lesson that—

“They also serve who only stand and wait.”

It is on the ground of these obvious ethical considerations, which hold good in all the relations in which humanity can be placed, that, in the presence of the abnormal relations of States to each other, active duties come first, and that we have to discuss the doctrines of self-vindication, self-defence, co-operation, and intervention, before we proceed to the doctrines of jural submission and neutrality.

It is on the subject of neutrality that the greatest amount of misconception appears to exist; and I shall, consequently, dwell upon it with an amount of care beyond that which it will be necessary to devote even to the corresponding doctrine of intervention. If neutrality were an attitude, which, apart from necessity altogether, any State might justly assume, as my distinguished and lamented colleague, Dr Bluntschli, has maintained, it would of course be entitled to the precedence which he, and almost all international jurists give to it over the doctrine of intervention. But then it would fall to be classed, not with the abnormal relations, which have their warrant in necessity, but with the normal relations, which have their warrant in proximate, visible, and intelligible justice, and its consideration would not belong to the present portion of this work.

CHAPTER III.

WITHIN THE SPHERE OF THE ABNORMAL RELATIONS THE FUNCTION OF JURISPRUDENCE IS TO CONSTRAIN THE PROXIMATE WILL, AND THE FACTORS ON WHICH IT MUST RELY ARE FORCE AND FEAR.

It must always be a difficult and anxious task to draw a distinction in fact between one class of relations and another, which shall warrant jurisprudence in shifting its ground from persuasion and reason to force and fear. That "perfect love casteth out fear,"¹ is most profoundly true. But perfect love is possible only in coincidence with perfect reason; and human life, as we know it, and have to deal with it, is a conflict between love and hatred, between reason and unreason, between normality and abnormality. Hence no human relations are normal in the sense of being wholly undisturbed by irrational impulses, or abnormal in the sense of being altogether bereft of rational guidance. The proximate will and the ultimate will never conflict so directly and consistently as to warrant the entire suppression of the former in behalf of the latter. Nor, on the other hand, is the ultimate human will ever so coincident with absolute will as to entitle it to entire supremacy over the promptings of immediate sentiment. All that is humanly possible is, that the course of action which is indicated by our general nature should be made to preponderate over that to which our exceptional

¹ John iv. 18.

nature impels us. Now experience proves to us that, in the life both of men and of States, a point of disorganisation may be reached beyond which this preponderance can no longer be maintained by the action either of subjective or objective reason. It is at this point that we enter the sphere of the abnormal relations, and that, an appeal to fear as a substitute for reason being warranted by necessity, force acquires a jural character. The ascertainment of this point is always a matter of the gravest difficulty, and it is the standing reproach against international jurisprudence that it should still be left to be fixed by individual States. But, supposing it to be ascertained that the proximate will of a State with which we are called upon to deal has become self-contradictory and suicidal, and that its actions have ceased to be controlled by reason, it is obvious that the ordinary appliances of diplomacy are no longer in place, and that where we must fail to convince we must endeavour to coerce. All religions appeal to fear even when their dogmatic teaching, as in the case of the Decalogue, is in entire accordance with results which have already been reached by human reason, and fear is a factor with which no system of jurisprudence, however rational, can afford to dispense.

It by no means follows that, in order to call this factor into play, physical force should be resorted to at once, or at all. The reason of the State, though insufficient for its guidance to what is right, is never, as we have said, wholly inoperative, and it may be sufficient to lead to its voluntary acceptance of what it recognises as inevitable. But the inevitable will be recognised only when it is presented from without. Pacific or non-physical international action

can only emanate from objective reason, and will be operative only when the State which acts possesses and exhibits to the State against which its action is directed an amount of physical force in the background which is physically irresistible, whilst, at the same time, it leaves no doubt of the sincerity of its determination to employ this force unless its ultimatum be accepted. In the absence of international organisation, such action is possible only to great States or combinations of States; but, if judiciously used by them, there is no other means at all approaching it in efficacy. If the lightning is to be spared, there must be no possibility of mistaking the roar of thunder for the noise of wind. Let me give a conspicuous example of the value of fear as a jural factor.

There can, I believe, be no rational doubt that the war between Russia and Turkey in 1877 might have been prevented and its objects attained, had the Powers which met at the Conference of Constantinople in December 1876, and more especially this country, converted the attitude of feeble and insincere remonstrance which they assumed into one of pacific intervention, by announcing their *determination* to *enforce* their advice. It is quite true that they were hampered by the provisions of the unfortunate Treaty of 1856; but "the integrity and independence of the Ottoman Empire" would surely have been as safe in their hands as in those of Russia, to which they abandoned it. But, though the most flagrant historical instance with which I am acquainted of the disasters which may be occasioned by stopping short at remonstrance in abnormal circumstances, when the remonstrating Power might have attained its object by pacific intervention, it is by no means the only one known to recent history.

I am not aware, indeed, that there is any exception to the rule that the highest form of what has been called "moral pressure" has proved an utter failure wherever the State against which it was directed had reason to believe that there was no sincere intention of resorting to physical force. Mere diplomatic scolding has always been treated as impertinence; and if not followed by the *ultima ratio* of actual war, has diminished the influence of the State which used it. The only arguments by which either men or States are ever really convinced are those which they work out for themselves, or, at any rate, which they fancy themselves to have worked out. International argumentation ought, consequently, to be used with great discretion, and so as, if possible, to lead to the impression that the bent of mind which it seeks to produce, or even the special suggestion which it insinuates, did not proceed from an external source. The production of this impression is one of the highest achievements of the diplomatic art. The dismissal of Sir Henry Bulwer by the Spanish Government, in 1848, has often been mentioned as an instance of what results from the indiscreet application of argument. The relations in which we were placed to Russia during the Polish insurrection, in 1863, and to the German Powers and to Denmark during the Schleswig-Holstein war, in 1864, by the sermonising propensities and non-intervention principles of Lord John Russell, demonstrated, rather painfully to our national self-esteem, that of all the weapons of diplomacy, the "moral blockade" is that which is most readily blunted. We might just as well hope to administer municipal law by distributing tracts as to arrest the course of international wrong by printing blue-books. It is the terror produced by the certainty that physical force is

near at hand that alone can render its application superfluous. Force is the bullion on which international credit depends, and fear is its circulating medium. The contrast between the results of the conduct of the Western Powers towards the Ottoman Empire on the occasion I have mentioned, and after the Treaty of Berlin, strikingly illustrates the truth of these remarks. Can any one suppose that the peaceable evacuation of Montenegro, or the rectification of the Greek frontier, could have been effected had the Porte been led to believe at Berlin in 1878, as it had been led to believe at Constantinople two years previously, that, come what might, no constraint was to be imposed on its sovereign will? Even with no such assurance to trust to, it was not till the concerted demands of the Powers upon Turkey was followed up by the naval demonstration in 1880-81 that the extension of the frontier of Montenegro was conceded; and Epirus was ceded to Greece only in the spring of 1882, when the pressure of the Powers had cut off all hope of resistance. If the remaining provisions of the Treaty of 1878, granting autonomy to the European provinces and reforms in Armenia, are ever to be carried out, it must be by corresponding means. Nor is the conduct of Turkey probably in this respect so exceptional in kind as we sometimes imagine, however excessive it may be in degree. The inevitable, in short, is the only form in which almost any State accepts reason from without.

There is one direction in which it sometimes seems to me that pacific intervention in the form here indicated might be resorted to, in which it has never been applied—I mean in *enforcing* proportional disarmament. Germany in comparison with France is a poor country, and, as such, cannot

continue to support its present preparations for war without such injury to the development of its national resources as must ultimately throw it behind its richer rival. Suppose, then, that Germany were to give to France the choice either of mutual disarmament or of immediate war? In her present mood, I believe, France would disarm; and in so doing, I am quite sure that she would add to, in place of diminishing, her international *prestige*. In this manner a war of international effacement, if not of national annihilation, on the one side or on the other, which almost threatens civilisation itself, might be averted, without changing the relative positions of the two States. The greatest obstacle to such an arrangement, at the present moment, I believe to be, not the desire for vengeance on the part of France, but the insane spirit of militarism which her late victories has awakened in Germany. In this respect Germany, for the present, has changed places with France; and if the "good cause" had anything to do with her success in the last war, it seems but too likely that in the next it may be on the other side. Of the advantages which would result from the application of this principle to the proportional reduction of naval armaments, I shall speak hereafter.

In these remarks I have studiously avoided the use of the common phrase "moral intervention," on the ground that physical intervention, even when warlike, the moment that it becomes jurally inevitable, is not less moral than pacific intervention. As there is no neutral territory between what is moral and what is immoral, all intervention that is not moral falls under the category of the anti-jural relations. All jural intervention is moral intervention.

CHAPTER IV.

OF THE GENERAL ENDS OR OBJECTS OF BELLIGERENCY OR
JURAL WAR.

Assuming the science of jurisprudence still to be our guide through the dark and terrible region which we must now enter, the first question which we have to ask of it is,—What are the ends or objects for the attainment of which it warrants the exhibition, and, if need be, the application of force? And the first answer which we receive is a negative one.

(A) *War can never be its own object.*—In common with all the other abnormal relations, war can be jurally recognised only as a means to its own annihilation. It is this truth which has so often found expression in the maxim that the object of war is peace. War—conflict—in itself is mere ethical and physical friction, which impedes progress and limits proximate freedom. We cannot lawfully fight for fighting's sake; because fighting, in this sense, is a wasteful expenditure of force, and law is an ideal economist.

Now this obvious and trite consideration yields very important practical results, not always perceived by those in whose mouths we find it. It condemns all militarism when seen exclusively from the military point of view, all arming, drilling, parading, sham-fighting, and the like, which has no adequate object external to itself. What these objects are we shall see hereafter. All that I assert for the present is, that on the ground of its abnormal character alone we are war-

ranted in excluding from the objects of war all that soldiering for the sake of military glory which has been, and is still, I fear, so prominent amongst the causes of war.

(B) *War becomes jural as a means, only when it is the sole means.*

That war is justified only by necessity is another of those maxims which find acceptance *semper ubique et ab omnibus*, the moment that reason and reflection begin to take the place of passion. With the grounds of this maxim the reader is already sufficiently acquainted. What it is here important for us to remark is, that as war is always a means and never an end, so it is always the last or ultimate means towards its end. The principle of necessity thus reduces the ends for which war may be employed as a means, just as we shall see hereafter that it reduces the means which war may employ, to the *minimum*. There must be as few wars as are consistent with the attainment of the ultimate ends of war, and in the prosecution of these wars there must be as little expenditure of force as is consistent with the attainment of its proximate ends. These limitations are common to war with all other jural appliances, whether legislative, judicial, or executive; for the science of jurisprudence repudiates the passing of an unnecessary Act of Parliament, the raising of an unnecessary action, and the expenditure of an unnecessary shilling in its prosecution, on precisely the same principles on which it repudiates an unnecessary battle or the needless sacrifice of a soldier's life.

(C) *The sole end of war as a jural factor is freedom.*

This conclusion follows, of course, from the assumption that war is a jural factor, and that, like jurisprudence itself, it

ministers to ethical ends only by setting ethical factors free. But is this conclusion warranted? Though war cannot be an end in itself, is it true that, as a means, it can seek no higher or wider end than merely setting forces free which have been generated by other factors? Does war never generate the forces which it wields? Though it will scarcely be questioned that it is mainly as an executive or corrective process that war is defensible, there are many who expressly, and still more who implicitly, claim for it a higher character and wider functions. They do not contend that it can be its own object, but they ascribe to it objects which transcend mere jural factors. Much of the obscurity which surrounds the objects of war arises from the conflict between the two teleological doctrines thus engendered, and much of the indefiniteness of the laws of war is to be ascribed to the habit of deducing them now from the one and now from the other. For these reasons it is necessary that we should distinguish clearly between them, if we would determine to which our allegiance is due.

1. *The jural doctrine.*—In accordance with this doctrine, as we have just seen, the objects of war are limited to giving free play to powers, already called into existence by other factors, which are limiting their reciprocal action by the false relation in which they stand to each other. War in this view becomes suicidal and self-contradictory the moment that it aims at producing or developing powers from which new rights shall result. War may be the means by which political fermentation is corrected, and sound products may be obtained from its action; but war is not like knowledge, which is itself a ferment.

2. *The military doctrine.*—This doctrine, on the other

hand, represents war as a directly generative factor, by which new powers and new rights are called into existence. It is a process of national growth, by which citizen qualities, physical, intellectual, and moral, otherwise unattainable, are evoked and strengthened. Viewed in this light, war becomes a productive industry, and belligerency, or the attitude of nations at war, passes from the category of the abnormal to that of the normal relations. This doctrine dispenses with necessity as a warrant for war, because development—growth—is a right inherent in national no less than in individual existence, and rights draw after them the conditions of their assertion.

From the mystery which hangs over the ultimate character of evil, and the inseparable manner in which it is intertwined and blended with good in this inexplicable world, it is impossible to dismiss this latter doctrine as wholly false. We may not be prepared to go along with Heraclitus, in hailing war as the father of all things, or with M. Brocher de la Fléchère, in recognising it as the source of law; but we cannot ignore the fact that all jural activity resolves itself into a struggle with evil, and that the power which is developed is proportioned to the intensity of the struggle. It is not as a mere executive process that war has been celebrated and sung by men in all ages, that so much of their time and energy and enthusiasm is expended in its mere imitation in games and in sport, and that it is the only occupation in which they engage without regard to consequences. That the rapture of the strife raises the spirits, strings the nerves, and sharpens the wits, must be conceded; and, to the extent to which this takes place, we must admit that war develops force and generates power.

It was in this aspect that Graf von Moltke represented

war in his celebrated letter to Professor Bluntschli, in acknowledging receipt of the *Manual of the Laws of War*, prepared by the International Institute at Oxford in 1880. "Perpetual peace," he said, "is a dream, and is not even a beautiful dream. War is an element in the order of the world ordained by God. In it the noblest virtues of mankind are developed: courage and the abnegation of self, faithfulness to duty, and the spirit of sacrifice: the soldier gives his life. Without war the world would stagnate and lose itself in materialism."¹

But though, in virtue of these considerations, it may be impossible to refuse to war productive qualities which act, to some extent, as a set-off against its wasteful characteristics, a set-off does not balance an account; and when every allowance has been made for the invigorating and chastening influences of war, the virtues which it engenders will be found to offer a very insignificant compensation for the destructive vices which it develops. "Bones and ashes make the golden corn;" but we can no more hope to reduce the price of corn by manuring our fields with the bones and ashes of our heroes, than by paying premiums of insurance on corn which has gone to the bottom of the sea. Though it may not always act exclusively in one direction, it is of the essence of conflict to neutralise and dissipate force; and this equally whether, the forces being equal, they counterbalance each other, or

¹ *Revue de Droit International*, tome xiii., No. 1. 1881, p. 80, and M. Bluntschli's *Reply*, p. 82. For corresponding sentiments, and even expressions, see Ortolan, *Diplomatie de la Mer*, vii. p. 5, and Heffter, *Droit International*, § 4. How does Count von Moltke explain the fact that materialism has flourished in Germany, since his two great wars, as it never did at any previous period of the intellectual life of his country?

whether, being unequal, the one preponderates. So long and to the extent to which the conflict continues, the conflicting forces absorb and impede each other. Progress by their means is possible only when they pull together. War, therefore, in itself cannot be directly productive, and its indirect productivity, relatively insignificant, becomes absolutely illusory.

It is only by vindicating the rights inherent in a stronger national character, or a higher civilisation already achieved, and in thus establishing the true relation between right and fact, that the so-called conquering nations have grown rich and powerful themselves, and have contributed to the power and wealth of the nations which they conquered. The process itself always caused a prodigious loss on both sides. Without going into the boundless field of historical inquiry, it may, I believe, be asserted, without fear of substantial contradiction, that there is no instance in which one civilised nation gained permanent power, and thus increased the basis of its rights, by the conquest of another equally civilised nation, or in which a barbarous nation did so by the conquest of a civilised one.

Wherever such an apparent result is presented, it will be found, on analysis, that the conquest resolves itself into a process of reciprocal action in the same direction.

Let us take two or three conspicuous examples by way of illustration. Rome gained in power herself, and developed the resources of mankind, by her conquests in western and northern Europe, and in Africa. But in these she merely vindicated the rights of a civilisation already greatly in advance of that of the nations which she conquered. She set productivity free. She gained nothing by her conquest

of Greece except in so far as her own productivity was set free by the reciprocal conquest she experienced from the higher culture of a nation with which she was thus brought into closer contact—a process which probably would have advanced more rapidly by peaceful contact and rivalry. That the martial qualities which she displayed in these wars were strengthened and developed by their exercise, and became productive in other directions, is unquestionable. But had these been mere wars of conquest, having no other objects, conscious or unconscious, than the extension of her resources by the appropriation of the resources of the conquered, even that object would not have been attained. The brutalising and degrading effects of wars of mere appropriation and destruction, or of mere jealousy, envy, suspicion, vengeance, or vanity, render them ultimately enervating, and more than counter-balance any exhilarating influences which they may exert in the first instance, or any material gains which may result from them. The Napoleonic wars were a direct loss to France, both as regarded her material resources, her international rights, and her powers of development. Savages are continually conquering each other, but they grow weaker and weaker by the process; and there is no instance of a pirate or a highwayman who ever became rich or powerful by his calling, or by any other calling for which it trained him; though there can be no doubt that piracy and highway-robbery frequently developed manly and generous qualities closely analogous to those which result from success in predatory wars.

On these grounds, then, I think we are warranted in adopting the second of the two doctrines here enunciated, and in

holding the province of jural war to be limited to the vindication of rights resulting from facts already called into existence by other factors.

In condemning wars of conquest on this principle, the distinction between what we have called mere conquest, and the application of force to the vindication of territorial acquisitions already effected by social or industrial aggression,¹ must be carefully kept in view. A province of one nation, we shall say, from the greater energy, and more rapid multiplication both of the numbers and wealth of its inhabitants, pushes into the adjoining province of a neighbouring State. By purchase and intermarriage, by the building of bridges—if they are separated by a river—and of houses and villages,—by the reclamation and cultivation of waste lands, the establishment of manufactories, the construction of railways, the opening of private educational institutions, and similar peaceful processes, the one population supplants and absorbs the other by its own consent, and with the full concurrence of its Government. In so far as private rights and obligations are concerned, the province has already changed hands; and the municipal law which, in accordance with the principles of private international law, would fall to be administered within it, would no longer be that of the nation to which it belonged politically, but that of the nation by which it had been socially and industrially annexed. Domicile and nationality would have parted company, not for a special purpose or a limited time, which we shall see afterwards to be an admissible arrangement under certain circumstances,

¹ As to the right of aggression generally, see *Institutes of Law*, pp. 414-420.

but generally and permanently. The former political nationality of the individuals would here be in continual conflict with their new domicile, and the evil would be irremediable even by their nationalisation, because it would be they who had absorbed the State into which they had migrated, not the State which had absorbed them. We should there have a population which really continued to belong to one State, governed by the municipal law of another,—we should have a Danish province, we shall say, which, by perfectly legitimate means had become German, still governed by Danish law. Now, so long as there is no international legislature, judicature, or executive, by which such an anomaly can be corrected, the direct application of force by the social and industrial conqueror to the vindication of rights thus existing, but the recognition of which national jealousy withholds, I regard as falling clearly within the province of correctional, and as such, jural war. If freedom is to be vindicated and national progress is not to be impeded, war for these purposes is justified by necessity. The higher object of bringing positive law into conformity with fact, and with natural law as the exponent of fact, overrides the lower object of respecting the integrity of a recognised State; and in the absence of other factors for its vindication, this higher object justifies war. So far as Germany confined her action in 1864 to this object, it fell within the law of nations. The opposite was the case, however, the moment that this object was extended to the acquisition either of territory or of seaports still in the industrial possession of a Danish population. Such an acquisition was anti-jural,—it was an act of international robbery—and

was justly stigmatised in Earl Russell's despatch of 20th August 1864.

(A) A recognising State cannot jurally assert by war the liberty of acquiring new rights by industrial means within the territories of a recognised State.

The recognition of a State implies the recognition of its capacity to manage its affairs, and to avail itself of its resources. During the subsistence of recognition, therefore, the recognised State is the judge, without appeal, of the forms of industry which may or may not be carried on within its borders, whether by natives or by foreigners. Should it adopt a policy obstructive to foreign enterprise and native prosperity alike,—such, for example, as imposing prohibitive duties, closing its ports or rivers, preventing the working of mines, the construction of railways, or the like,—the only jural remedy consists in diplomatic remonstrance and the ultimate withdrawal of recognition. Beyond the limits of the positive law of nations, as determined by the doctrine of recognition, the question whether war may or may not be undertaken for such a purpose, in accordance with natural law, is a question of fact which turns mainly on the capacities present or prospective of the existing inhabitants of the territory. The rights and duties of the more advanced portions of mankind, in such circumstances, do not admit of any abstract or general determination. All that can be said in principle is, that at the point at which the rights and duties of recognition cease, the rights and duties of guardianship begin; and that the assertion of these rights and duties, if need be, falls within the objects of jural war in the

sense which natural law attaches to it. That such wars can rarely be necessary for self-preservation—*e.g.*, by the extension of the food-supply of a manufacturing country—is nothing to the purpose. Unless we are to separate jurisprudence from ethics altogether, we must accept the duty, not of self-preservation alone, but of cosmopolitan development, as the measure of national obligation. Colonisation, and the reclamation of barbarians and savages, if possible in point of fact, are duties morally and jurally inevitable; and where circumstances demand the application of physical force, they fall within necessary objects of war. On this ground the wars against China and Japan, to compel these countries to open their ports, may be defended. Till the whole world is divided into recognised States, the maintenance of forces like those now maintained by England in India, and by Russia in Central Asia, though for purposes inconsistent with the relations which subsist between recognised and recognising States, will be justified by the higher, but not less real necessity, of discharging the duties which they owe to subject and protected races.

It is conceivable, of course, that these forces should be controlled, not by individual States, but by a central authority, emanating from the whole body of recognised and recognising States, and that the process of civilisation should thus become the common task of civilised mankind. The unanimity with which the abolition of slavery has been undertaken, seems to render something like common action in the performance of more fruitful enterprises a less unrealisable conception than it at first appears. That a country like Central Africa, the

moment that it is explored, should be divided amongst separate European nations, and the process of its development be arrested by the mutual jealousies which will inevitably spring up between them, seems a very undesirable arrangement. Yet the only alternative which the present international organisation, or disorganisation, of Europe affords, is the recognition of the "integrity and independence" which Central Africa has enjoyed since it was first peopled.

In this direction the international jurist will watch with interest and sympathy the efforts of the King of the Belgians to confer on the regions watered by the Congo, something approaching to a neutral character, by the action of what is called the Comité International.¹

CHAPTER V.

OF THE SPECIAL ENDS OR OBJECTS OF WAR.

Of war for the assertion of subjective freedom.

Assuming as the result of our previous discussion that the sole object of war is freedom, we have now to inquire into the effects of this limitation. We have seen² that the fact of separate State existence confers on the State thus existing

¹ *Les Français, les Anglais et le Comité International sur le Congo*, par Émile de Laveleye. 1883. M. Moynier had already called the attention of the Institute to the subject on the occasion of its meeting at Paris in 1878 (*Annuaire* 1879-80, vol. i. p. 155); and has just done so again at its meeting at Munich in September 1883.

² *Ante*, vol. i. p. 103.

the *right* to international recognition. This fact will always become known first to the State itself. The knowledge, or conscious recognition of this fact, or even the conscientious belief in it, on the part of a separate political community, justifies that community in asserting it, if need be, by force.¹ A State whose right to recognition is denied, thus finds itself at once in an abnormal relation towards the denying State or States; and this abnormal relation, if otherwise irremovable, it may jurally seek to remove by war. States do not live or expand *in vacuo*; and an effort undertaken for the sole purpose of self-assertion may assume the characteristics of a war of self-defence, of intervention, or even of jural aggression. As an abnormal relation, the rights which it confers are limited by the jural necessity in which they originated; and its only jural object being freedom, it ceases to be jural the moment that its effect is to limit the proximate freedom of the State by which it is waged, of neutral States, or even of the opposite belligerent, to a greater extent than it promotes the ultimate freedom of one or all of them. A war of vengeance for injuries done or imagined, or of suspicion of injuries anticipated, or of jealousy of the development of a rival Power, is thus anti-jural just as much as a war of mere covetousness, fanaticism, or sentimentalism.

In the abstract all this is plain, and will be undisputed by

¹ It is on the ground of the sincerity with which a community holds this belief, which, though it may prove ultimately to be mistaken, does not appear irrational, that the rights of belligerency may be recognised by neutral States as existing in a claimant for freedom, whilst political recognition is still withheld. It was in this position, as we have seen (*ante*, vol. i. p. 142 *et seq.*), that the Southern States of America stood to the European Powers during their conflict with the North.

those who recognise the dependence of jurisprudence on ethics. But the appreciation, in the concrete, of the circumstances which must determine the conduct, either of the State asserting its freedom, or of the other States affected by this assertion, amidst the passions, fears, and jealousies that the various relations in which they stand to each other never fail to excite, is of such difficulty as often to render its accomplishment hopeless, and to make men long for the interposition of some independent central organisation. All that can be said generally, is, that war for the assertion of subjective freedom may be jural, and that the conditions of its jural exercise do not differ from those which govern all jural war.

It is scarcely possible, perhaps, to mention a war between two separate States which can fairly be said to have been legitimated on the ground that it was waged for the assertion of subjective freedom; but this object may be pleaded in partial justification of some of those that have been waged by progressive against retrograding States. As an example, I may mention the war between Germany and Denmark in 1864, the former of which had long been gaining and the latter losing ground in Schleswig-Holstein. Mostly they have been internal or civil wars, waged by conquered provinces of alien race for the assertion of separate political existence,—as those by the Dutch against Spain and the Swiss against Austria, which were terminated by the Treaty of Münster in 1648; by the Greeks and other Christian races under the dominion of Turkey, from the war which led to the independence of Greece in 1827, down to the present time; by Belgium against Holland in 1832; and by the Lombard provinces of

Italy, which was ended by the peace of Villafranca in 1859, and the consolidation of the kingdom of Italy in 1870: or else they have been wars by colonies against their mother-countries, which became international wars only to a limited extent in consequence of the recognition of belligerency by neutral Powers. Of these the typical examples are the two wars of which the one led to the independence of the United States of North America in 1783, and the other gradually effected that of the South American Republics between 1816 and 1825. To these, notwithstanding its unsuccessful issue, ought probably to be added the war of Secession by the Southern States against the Union, which possessed an international character subsequent to the Queen's Proclamation of Neutrality in 1861, followed by that of the other Powers.

CHAPTER VI.

OF THE SPECIAL ENDS OR OBJECTS OF WAR—*continued.*

Of war for the defence of subjective freedom.

The primary conception of war, as indicated by the etymology of the word itself, is *defence*,¹ and the right of every separate rational entity to defend its freedom of separate action is a right so plainly involved in the fact of separate existence, that the legitimacy of war in self-defence is recognised by many who question it for all other objects.

¹ Ortolan, *Diplomatie de la Mer*, vol. ii. p. 5.

But even this right ceases if its exercise is attempted to be carried beyond the bounds of reason. The right of self-defence vanishes with the power; and the verdict of battle, when fairly ascertained, must be loyally accepted. For the State to resist it, is as irrational as for an individual to resist the judgment of a court, and as ignoble as to fight with the police.

A vanquished State which carries on a guerilla warfare, or resorts to assassination, places itself, not in an abnormal only, but in an anti-jural relation, and this not to its conqueror alone, but to the rest of mankind. Its success is impossible; and a war of suicide, like a war of extermination, is always an anti-jural war.

The only qualification which this proposition seems to demand is, in the case in which quarter is refused by the enemy, or where, from his character, the ordinary usages of humanity, even if promised, are not to be expected from him. Where a conflict with pirates, for example, has been carried to the last extremity, it is a grave question whether the magazine of a ship may not be legitimately fired; and who shall say that those of our brave and unhappy countrymen, who, in the terrible Indian Mutiny, preferred, not suicide only, but even the slaughter of their loved ones to surrender, carried resistance too far?

But there is another question of almost equal difficulty and of wider importance which meets us in fixing the jural limits of self-defence. We have seen that military force can neither be jurally employed nor developed except in behalf of freedom, and we have now to ask whether the immediate freedom of the individual State justifies the indefinite development, or the unlimited use, of its fighting power. Is the State entitled,

with a view to its own safety, to organise and maintain such a military force as shall secure it against the consequences of every possible attack, whether by a single State or by a combination of States? This question, again, brings up the subject of the legitimacy of militarism, which, whether we regard it from a social or an economical, from a national or an international point of view, is of all others fraught with the widest interest to Continental nations at the present time.

Now the first consideration which may help us, I think, to a general solution is, that absolute security to freedom involves absolute supremacy. The freedom of no State can be absolutely secure unless that State is superior in power, not only to every other State, but to all other States; and as a State in this position would not satisfy the conditions of the fundamental doctrine of international recognition, an affirmative answer to the question we have stated, like the assertion of absolute independence, would be a *reductio ad absurdum* of international law. The assertion of absolute supremacy by one State being a denial of freedom to every other State, and to all other States, is inconsistent with the presumption of reciprocating will and power. But it is said that the supremacy, though maintained, need not be asserted, and that to question the reciprocating will of the State which maintains it, is as great a breach of international confidence as that which is implied in its maintenance. Professedly the State has armed, and continues armed, for the defence of its own freedom only; and as no two States are equally powerful, if each State suspected every other State and all other States of anti-jural designs, on the ground of the armaments which

they maintain, international relations would resolve themselves into a series of efforts for mutual self-defence.

But this, I fear, is very nearly the attitude which the principle of independence, in combination with that of militarism, even in its least objectionable form, assigns to modern States. They are not to go to war except at the bidding of necessity, and it will probably be admitted that, theoretically at least, necessity must be controlled by the ethical and jural considerations on which I have insisted. But in defence of its right to free ethical activity, each State is to be prepared for war *à outrance*, and this preparation is to take precedence of every other object, national or international. To this object the wealth of the State, its energy, its ingenuity, and the life of every citizen it contains is to be devoted, the only limit being the extent to which it consumes the resources by which it is fed. According to this theory the problem of national economics consists in so farming and husbanding the national resources that they shall yield and maintain the largest and most efficient military force always ready for battle.

Now granting that, at the present stage of international development, preparation for self-defence is a national duty from which no measure of international charity consistent with reason absolves the State, two questions present themselves: 1st, Is it possible to be always ready for war without occasionally going to war? and 2d, May the State jurally go to war in order that it may be ready for war?

To both of these questions I believe a negative answer must be given. No army, however well disciplined and well appointed, can be ready for war unless some considerable por-

tion of it has already been engaged in war. To new troops, human slaughter on a great scale is a spectacle so appalling, and an experience so terrible, that nothing but the presence of veterans, to whom it is familiar, can bring them to encounter it with steadiness. During the long peace of forty years which followed the battle of Waterloo in 1815, it was on the prospect that the generation that had seen war would become extinct, that the hopes of the peace party mainly rested; and how nearly these hopes were realised was proved by the necessity of imposing on old Lord Raglan the command of the British army in the Crimea. The task was one which age had rendered unsuitable for him, and impossible to the Duke of Wellington. In the three armies in the field, it was those of our troops that had seen service in India, of the French troops that had seen it in Africa, and of the Russian troops that had seen it in Circassia and Central Asia, that alone were ready for immediate action; and from them the staff officers and divisional commanders were mainly drawn. No amount of drilling, parading, camping-out, reviewing, and sham-fighting will train men to war like war itself. Unless occasionally employed, moreover, for the purposes for which they are designed, these occupations become so "flat, stale, and unprofitable," that the men themselves can scarcely be induced to engage in them, and the community grudges the time and money which they cost.

If preparation for immediate self-defence, then, be necessary to freedom, and if this preparation involves the necessity of war, it would seem that actual aggressive war may be undertaken for the sake of prospective defensive war. But in thus

viewing the matter from the subjective or national side alone, it is forgotten that preparation for defence by immediate war justifies the anticipation of this preparation by immediate war. The theory of militarism for the self-defence of States thus resolves itself into a rush at each other's throats. In preparing itself for immediate self-defence the State offers a perpetual *casus belli* to all neighbouring States, and thus increases the danger to its own freedom which it seeks to avert. Against this danger nothing, as I have said, can protect it but warlike supremacy; and preparatory wars of self-defence thus end, not in wars of freedom, but in wars of subjugation, which, being inconsistent with recognition, are forbidden by the law of nations. If the doctrine of recognition means anything, it surely amounts to an expression of mutual confidence, to the extent of obviating the necessity of preparation for immediate war. It is not war but peace that supplies the sinews on which even war ultimately depends; and the States that remain longest at peace are those which, being strongest, are ultimately the safest. Savages are continually fighting, and yet, however formidable they may be in the first instance, they are always vanquished in the end by civilised men, who fight, comparatively speaking, very rarely. The Crimean war trained the troops of France and England and Russia for battle, but it killed their young men and consumed their material resources; and had any one of the three been attacked by a third Power—Germany, for example—at its termination, the State so attacked would have been found to be weaker than at its commencement. The weakest and most vulnerable period of the historical life of a nation is always that just

succeeding the termination of a great war. Germany never was in so much danger from Russia, or France from England, as after the battle of Sedan. Had no other motives than self-aggrandisement been at work, Russia might then have taken possession of the Slavonic provinces of Prussia, and England might have seized upon Egypt; and similarly, after the Russo-Turkish war, Germany might have reoccupied the Baltic provinces of Russia, almost without opposition. It is not war, then, even successful and victorious war, which gives security to States; and a military system by which war is provoked, is a source of danger both to internal and external freedom. It will be contended in Germany, I know, that these remarks do not apply to the case of a State whose freedom is continually threatened by the aggressive propensities of a neighbouring State. Whatever may come of the future, the present duty of a State thus situated, it is said, is to arm to the utmost limit of its resources. To this conclusion my answer has been already indicated.¹ If the allegation be well founded, the State thus situated has a present not a prospective *casus belli* presented to it, and the course of action which logically results to it from the principles of the law of nations is at once to withdraw recognition, to invoke the aid of other recognising States, and to give to the non-reciprocating State the option of proportional disarmament or present war. By thus bringing matters to a crisis and putting an end to the policy of preparatory armament and reciprocal restraint, it would be acting in behalf not of its own freedom alone but that of its neighbour. The objection to running the risk of thus precipi-

¹ P. 16.

tating war, the weight of which I fully recognise, is that it fails to give scope to the influences of time, which we must always hope will bring reason in its train. It may be that France of her own accord will give guarantees for her reciprocating will which will remove the suspicions she has justly excited in Germany by the levity with which she rushed into the war of 1870, and by thus staying the plague of mutual armament, without affecting her relative position, deliver herself from the danger of invasion in which, till then, she must perpetually stand. It is the hope of this occurrence which alone justifies, even as a matter of policy, the armed peace which not Germany alone, but the whole of Europe more or less, for the present maintains. As the poorer country of the two, the game of beggar-my-neighbour is one at which Germany, at all events, cannot afford to play very much longer.

When we come to speak of maritime war, we shall consider whether the principle of relative or proportional disarmament might not there also be realised.

CHAPTER VII.

OF WAR FOR THE DEVELOPMENT OF SUBJECTIVE FREEDOM.

That the right to be, and to defend our being, involves the right to develop our being, admits, in the abstract, of no dispute; and what is true of individual is no less true of national being. May war, then, be jurally employed for the assertion

of this latter right? May one recognised State go to war with another recognised State in order to extend the sphere of its own ethical activity?

We have already seen that the creation of new rights by the development of new powers does not fall within the province of jural war. Progress in any other direction than the perfecting of relations between existing powers must be dependent on other factors. But suppose that by means of other factors this progress has already been effected, that the State, by its industry and intelligence, has developed new powers and acquired for itself new rights, and that the free exercise of these powers and the enjoyment of these rights have become impossible within its recognised borders, may the State jurally extend these borders by making war on a recognised neighbour? Now, from the point of view of the law of nations, when regarded from its normal side, this question may, without hesitation, be answered in the negative. International recognition, from which the law of nations is deduced, implies the recognition of the *status quo* at the period at which it was entered into. It presumes the adequacy of each State to replenish and people the portion of the earth's surface which it assigns to it. It promises, not to leave it only, but to secure it in undisturbed possession of the territory assigned to it. But when this presumption in favour of the capacity of the State has failed in point of fact, and an abnormal relation has been created by the conflict which has arisen between fact and law, the law of nations which governs the normal relations of States is no longer applicable, and, recognition being withdrawn, law

may be jurally brought into conformity with fact, if need be, by means of war. If a progressive and a retrogressive State exist side by side, that the former will absorb the latter, in point of fact, is as inevitable as that a sponge will drink up water. And law, as we know, must follow fact. But law must not precede or propel fact. It must wait on it, not with patience alone, but, in such a case as we have imagined, with reluctance. It is the duty of the progressive State, in so far as may be, to hinder the retrogression of its neighbour; and it is only when the inevitable fact has declared itself in such a form that its jural recognition becomes a necessity imposed by the interests of freedom on the whole, that it may be jurally enforced by war. A. must gain *more* freedom than B. loses before A. can jurally seek to extend the sphere of its activity at B.'s expense. There must be an increase of freedom on the whole, before the development of subjective freedom can become a jural object of war. And this is a conclusion at which scarcely any circumstances will justify the individual State in arriving without international concert. The tendency to exaggerate our rights is at all times so much greater than the tendency to exaggerate our duties, that, where the vindication of our rights seems to us to justify aggressive war, it is specially important that we should control our conceptions of them by regarding them in the light in which they present themselves to others. If aggression does not impose itself on the national conscience in the character of an international duty, we may feel pretty sure that, to the international conscience, it will fall short of the character of a national right.

CHAPTER VIII.

WAR IN BEHALF OF OBJECTIVE FREEDOM.

To any one who possesses the most elementary acquaintance with scientific jurisprudence it will be obvious that, on the principle which I have so often stated and illustrated, of rights and duties being reciprocal and coextensive, every word that I have said on the rights of war from the subjective point of view admits of being repeated from the objective point of view. The freedom of ethical activity which the recognised State, under the sanction of necessity, is jurally entitled to vindicate for itself by war, it is bound, under the same sanction, to vindicate for every other State which it recognises. And the duty is subject to the same limitations as the right. If it be freedom alone which the State can jurally vindicate for itself by war, it is its neighbour's freedom alone which it is bound thus to vindicate. It is not to give him power, or virtue, or knowledge; it is only to liberate him from such external restraints as may have been imposed on his own efforts to become powerful, or virtuous, or wise. The doctrine of intervention thus rests on precisely the same ethical and jural principles as the doctrine of self-defence, for the simple reason that both doctrines alike result from the doctrine of recognition. But the study of scientific juris-

prudence has not yet reached the stage at which the acceptance of these obvious considerations can be taken for granted; and, for this reason, a slight criticism of what I believe to be the popular doctrine of intervention may with advantage be here introduced.

When I speak of popular opinions, I do not refer to those thoughtless and impulsive utterances by which men indicate the passing moods resulting from the pressure of immediate interests or present difficulties. On a former occasion,¹ when I treated incidentally of this subject, I quoted an expression of opinion to which I shall venture to recur, because it possesses exceptional importance from the eminence of the writer, the clearness with which it is stated, and the unanimity with which it was accepted at the time, both in Parliament and by the press.

In the letters which he published originally in the *Times*, under the title of "Historicus," and which afterwards appeared in a separate form with his name, Sir William Vernon Harcourt said: "In passing from the doctrine of recognition to that of intervention, we must leave the firm and beaten path which law has defined and practice consolidated, to explore the fluctuating and trackless depths of policy. In such a case the conscience of those who wield the might becomes the only rule of right. I do not disparage intervention. It is a high and summary procedure which may sometimes snatch a remedy beyond the reach of law. Nevertheless, it must be admitted that in the case of intervention, as in that of revolution, *its essence is its illegality*, and its justification its

¹ *Institutes of Law*, p. 285.

success" (p. 41). Elsewhere (p. 14) he says: "It [intervention] is above and beyond the domain of law, and when wisely and equitably handled by those who have the power to give effect to it, may be the highest policy of justice and humanity." Now I demur to doctrines like these, and I regard them as not only speculatively erroneous, but practically dangerous. They degrade jurisprudence, by supposing it to depend on *lower* principles than those which govern politics; and they throw politics loose, by assuming that they rest on no principle at all, or, at any rate, that they are entitled to set the stricter principles which govern jurisprudence at defiance. Their source is very obvious to me, and will, I daresay, when you peruse the volume, which, from its historical merits, I very sincerely recommend to you, be equally obvious to you. It is what indeed constitutes the fundamental defect in this very able performance—viz., the haziness of the writer as to the relation between ethics and jurisprudence. Being more of a historian than a philosopher, he has permitted himself to be led into the false distinction between perfect and imperfect obligations, against which I have warned you so often, and, as a necessary consequence, into the belief that the various branches of the science of life rest upon principles fundamentally different. It is surprising what a rank crop of practical blunders may grow from the root of one single speculative error. Historicus accepts this doctrine as a canon of the science of jurisprudence, apparently quite unconscious of the fact that its soundness ever had been, or could be questioned, and once and again refers to a passage in Rutherford's Institutes, in which it is stated in its baldest

and shallowest form. What we found¹ to be at most a distinction of *degree*, affording very little if any guidance in determining the limits of positive law, even practically, he believes to be a distinction of *kind*, which permanently and necessarily marks off the province of jurisprudence from that of ethics scientifically.

Perfect obligations according to him are the objects of jurisprudence and of law, and imperfect obligations are the objects of ethics, equity, and politics; and intervention, having in general the fulfilment of imperfect obligations in view, falls *within* the province of ethics, and as a necessary consequence *without* the province of jurisprudence! It is a political question, he tells us, to be solved by ethical principles. To this confident conclusion an exception is made in the case of intervention undertaken in self-defence, which is thus again cut loose from ethics and handed back to jurisprudence. The duty of defending our country is a perfect obligation with which jurisprudence may deal, whereas the duty of aiding in the defence of other countries—like charity—is an imperfect obligation, which raises questions of expediency or generosity only. Subjective obligations—our duties to ourselves—are perfect; objective obligations—our duties to others—are imperfect. It is just the error, over again, which last century brought down the harsh but not undeserved censure of selfishness upon a whole school of speculators, and gave rise to the equally baseless reaction which I have elsewhere explained.² Now without recurring to former discussions, it is sufficient to remark that, as the liberties of each involve the liberties of

¹ *Institutes of Law*, p. 281 *et seq.*

² *Ibid.*, pp. 207-209.

all, *if* the intervention in question be really an intervention in favour of the liberties of others,—and this is the only ground on which it can be justified at all,—it is, *eo ipso*, an intervention in favour of our own liberties. It thus falls within the category of interventions in self-defence, and by the admission of the writer in question, in accordance with the principles of the selfish school, within the province of jurisprudence. The only question which remains is, as I formerly said, the questions of fact, “Can we, or can we not, so intervene as to advance liberty on the whole?” Here then, as everywhere else, the distinction between perfect and imperfect obligations breaks down; and it becomes apparent that when intervention is justifiable at all, it is justifiable on grounds that, on Historicus’s own showing, are *not* alien to the science of jurisprudence. It may be true that it rarely *is* justifiable on these grounds, because the facts of society may rarely be such as to render the vindication of the principles of jurisprudence possible by its means. That is a question which the principles of jurisprudence and of international law leave altogether open to discussion. If this be so, all that it would prove is that intervention is very rarely justifiable on *any* grounds, which is precisely what Historicus wishes to make out. In his paper on recognition, he shows, very ably, that the only question of difficulty which that doctrine raises is a question of fact,—the question, viz., whether the characteristics of an independent and self-governing country are, or are not, present. If they *are* present, we are bound to recognise them, just as we are bound to recognise the possession of property, or the existence of a debt; if they are *not* present, recognition

is shut out by the absence of the facts upon which alone it can rest. There is nothing to recognise. So far Historicus is not only quite practical but quite philosophical. I trust I have shown you that, by an analogous train of reasoning, it was possible for him to have cleared the doctrine of intervention from all difficulties in point of principle, and to have resolved it, openly and undisguisedly, into a discussion of time, place, and circumstances.

The reason why the doctrine of intervention seems to partake of what is popularly called the political element to a greater extent than the doctrine of recognition, is that the questions of fact which it involves are far more variable and complicated. If politics has any meaning at all, as a separate science, it is simply as the science which is conversant with the contingent element in positive law; or, in other words, which presents positive law to us in the aspect in which it is dependent on the ever-varying conditions of external existence, and not on the unchangeable constitution of our human nature, or of the universe. It is not a separate science but a separate point of view, because there can be no positive law till this contingent element is legislatively determined. Now in the case of the doctrine of intervention, the political investigation is always attended by special difficulties, arising from the abnormal character of the agencies already at work. Are we, by our interference with affairs which we often understand very partially and may be able to influence very little, really aiding liberty, or are we not, and this not in the special case but on the whole, and with a view not to the present only but to the future? The question is one which branches out in

all directions, and in the case of warlike intervention it is in general so much safer to answer it in the negative than the affirmative, that, so far from being surprised at the hesitation with which our statesmen sometimes approach what appear to be positive duties, I often wonder that they can see their way to such a line of policy at all.

On this ground I do not contend that the argument which I have here submitted invalidates the position which I understand to be taken up by Mr Bright, Mr Richard, and the other members of the Peace party. They do not dispute, I imagine, that the end justifies the means, provided that the end be higher than the means; but they meet us by a denial, in point of fact, that any end that can possibly be attained by war is an adequate compensation for the means which it wastes and the horrors which it entails. Their allegation, if true, would amply warrant the conclusion which they draw from it; and there are few of us, I daresay, who have not often felt tempted to agree with them. But their allegation fails to take account of the diabolical forces which lurk in the mysterious hiding-places of our corrupt nature. We know, alas! that, even in our own time, there have been terrible occasions when the mouth of hell seemed to open, and when horror-stricken and helpless men and women have prayed to their heavenly Father that they might be privileged to hear the roar of our guns or the scream of our bagpipes as devoutly as ever Mr Richard prayed for peace. On these terrible occasions, if on no others, wars of order and wars of discipline are surely justified by the ends which they seek. They become moral necessities; and if they are moral necessities, that they are

jural necessities also, in every sense in which jurisprudence claims deeper roots than mere formalism, is an assertion which I make without hesitation.

In the next chapter we shall consider the doctrine of intervention, on the assumption that it falls within the scope of the science of jurisprudence.

CHAPTER IX.

OF THE CONDITIONS OF INTERVENTION.

Intervention and recognition are relations which are mutually exclusive. A scientific doctrine of intervention will consequently be the converse of a scientific doctrine of recognition, and the former will supply the rule of action when the latter fails.

Though war, when waged for jural objects and sanctioned by necessity, becomes a jural relation, it does not cease to be an abnormal relation inconsistent with the normal relation of recognition. But States can mutually withdraw recognition only on the cessation of the conditions which entitled them mutually to demand it as a right. So long as these conditions remain unchanged, the rights which flow from them are intact, and war between States so situated is anti-jural ; but no longer and no farther.

If we know the conditions, then, on which recognition becomes a right, we know the conditions on which it ceases to be a right ; and war for the vindication of the freedom

which recognition no longer guarantees may be jurally waged. The doctrine of intervention, whether it be applied to two States which interfere in each other's affairs, or assume the form which is more strictly called intervention by a third State or States between States already at war, is thus the doctrine of recognition reversed, negative being substituted for positive propositions. But the conditions of recognition as a State were the conditions of existence as a State, and if we fix the conditions of existence which confer the rights and duties of asserting and recognising freedom, which we have seen to be the object of State existence, we fix conversely the conditions of non-existence which take these rights and duties away. If we have succeeded, then, in developing a sound and exhaustive doctrine of recognition, we have developed, alongside of it, a corresponding doctrine of belligerency both subjective and objective. If we have discovered the tokens of freedom, internal and external, spiritual and material, which call for recognition, we have discovered the corresponding tokens of bondage which, under the sanction of necessity, call for war.

The question has been raised whether one recognised State is ever entitled to act on its individual opinion to the extent of limiting the proximate liberty of another recognised State, or even of defending itself by war. M. Arntz, the learned professor of International Law at Brussels, seems disposed to answer both propositions in the negative; and M. Rolin-Jaequemyns, in an interesting letter on the doctrine of intervention, which he addressed to him in the *Revue de Droit International*,¹ though demurring to the proposition that the State²

¹ 1876-77, No. IV. p. 681.

² *Ibid.*, p. 679.

must ask permission to defend itself, seems to accept the doctrine that no single State can jurally act on its own authority, either for or against another State, with any other object than self-defence; and for this doctrine he even claims the authority of Grotius.

"M. le Professeur Arntz aboutit, me paraît-il, à la vraie solution en admettant *le droit* d'intervention dans les cas indiqués par lui, mais en n'en *reconnaissant l'exercice légitime* que dans le chef d'une *autorité collective, agissant au nom de l'humanité.*" No one desiderates the existence of collective authority more strongly than I do, and in the conclusion of this work, I shall discuss the possibility of its establishment on a permanent basis in a spirit anything but confident indeed, but which I know will seem to M. Rolin-Jaequemyns, and probably to Professor Arntz, to err in the direction of over-hopefulness. But so long as such authority has no permanent existence which separates it from the intrigues of the hour, and must be called into being on each separate occasion "*par le plus grand nombre des états civilisés, qui doivent se réunir en un congrès ou en un tribunal pour prendre une décision collective,*" I can find, I confess, no principle which precludes the direct action of the individual State.

Self-protection is a right which results, as we have seen, from the fact and consequent right of separate existence. If my life or liberty be threatened, or my goods endangered in presence or within call of the police, I am bound, it is true, as a condition of citizen existence, to invoke their aid; but in their absence, the judicial and legislative functions which belonged to them revert to me. I am entitled to sit in judgment on

my own case, and to right my own wrongs; and *what I may do for myself, I may do, and ought to do, for my neighbour*. As no State is jurally bound or jurally entitled to attempt the impossible, it by no means follows, even in cases in which the conditions of recognition have failed, that the conditions of belligerency or intervention have emerged. These may be excluded either by want of knowledge of the question at issue, or want of power to affect its decision. In either of these cases, the second of the alternate doctrines which govern the abnormal relations of States comes into play, and the duty of intervention gives place to the duty of neutrality.

These three doctrines, Recognition, Intervention, and Neutrality, with the subsidiary doctrines or rules logically resulting from them—the first as defining the normal, and the two others the abnormal relations of States,—constitute the *corpus juris inter gentes*. These three doctrines emerge, as we have seen, not simultaneously, but successively in the order in which I have here named them. So long as the facts or conditions on which the right of recognition depends are present—so long, that is to say, as the State continues to be and is acknowledged to be *sui juris*, the relation of belligerency, whether in the form of intervention or any other, can have no place. When intervention comes into play, recognition disappears, whilst neutrality becomes jural only on the failure of the former. Neutrality, or abnormal peace, is thus the converse of intervention; but its attitude towards recognition is an attitude of hesitation, not of negation. Nay, as regards what is called belligerent recognition, neutrality is an acknowledgment, not of State existence, it is true, but of the legitimacy of the

question of State existence which has arisen between the belligerents.

So far our course seems clear, and any further study of the conditions of belligerency would lead us simply into a restatement of the doctrine of recognition from a negative point of view. Before proceeding, however, to consider the means by which war may be jurally prosecuted, it may be well that we should note the double meaning which belongs to the term intervention. As popularly used, intervention may either retain its etymological signification of coming between two States which stand to each other in an abnormal relation, or it may mean professedly and avowedly taking part with the one against the other. The former might be called double, the latter single intervention, and historical instances of both will occur to every one.

The intervention of France and England between Belgium and Holland in 1830 was a case of double intervention. The intervening States struck up the swords of the combatants; their action was directed against both, in their joint interest. The intervention of the allies between France and the various States at war with her under the first Napoleon was throughout a case of single intervention, because its action was directed wholly against France and the States which she had forced to join her, and in favour of the States with which she was at war.

But these are differences in the occasions which call for intervention, and in the modes of its application, not in its object, or in the general means which it employs. In both cases it seeks ultimate freedom, and it seeks it by limiting

proximate freedom. In the case of the Belgian revolution, the proximate freedom both of Belgium and of Holland was limited; their recognition by France and England, as self-governing communities, was partially suspended. In the case of the French wars, this occurred to France alone. But in both cases the object was the ultimate freedom of humanity, under which the ultimate freedom of the contending States was subsumed.

The States against which intervention was directed, were assumed to have violated the conditions of their recognition as States, on which their proximate freedom, or, in other words, their independence by the positive law of nations, depended. We are thus brought back to the question, in both cases, what are the conditions of State recognition by the positive law of nations, the violation or failure of which calls for intervention?

In treating of recognition, it will be remembered that we distinguished between absolute and relative recognition. At first sight it would seem that it was the first only which concerned us in the present connection—that intervention could be justified only by forfeiture of the conditions of existence as a State, not of existence as such a State. But on further consideration, we shall find that, whether as between civilised States enjoying plenary recognition, or between civilised and semi-barbarous States whose recognition is only partial, it is questions of the degrees and limits of their State existence, rather than questions of the fact of such existence, that usually give rise to the abnormal relations which demand intervention. Except during temporary paroxysms of anarchy, it has never been the absolute existence of France as a State, but always the

relative existence to which she laid claim, that has called third parties into the field. The whole doctrine of the "hegemony," or leadership (*ἡγεμονία*) of Europe, of which we used to hear so much up to the period of the late Franco-German war, raised only relative questions. The rights which France claimed in virtue of it, exceeded, in the opinion of the other Powers, the basis of fact on which they professedly rested; but that there was basis of fact broad enough to entitle France to claim a very high relative rank amongst them, was never disputed. It was, consequently, the relative recognition to which France laid claim, not the absolute recognition which she had enjoyed for ages, which was the subject of dispute, both during the first Napoleonic wars, and in her recent contest with Germany.

In like manner, it is quite possible that intervention might be justified in a case in which partial recognition alone was claimed or had been forfeited. If Turkey or Japan were to rise to the moral and intellectual elevation of European States, or if a European State were to sink to their present level, it is quite conceivable that questions which had reference to the recognition of their municipal laws and jurisdiction alone, might give occasion to jural war, involving States enjoying plenary recognition.

CHAPTER X.

OF THE MEANS BY WHICH JURAL WAR MAY BE JURALLY
PROSECUTED.

When, in our efforts to determine the limits of jural war, we turn from its objects to its means, it is scarcely possible to deduce, from the principles of ethics or of jurisprudence, any rule with reference to the public forces of the contending States more definite than the general maxim that war justifies the application only of the *minimum* of physical force, and of material expenditure. If there are two or more ways by which its object may be attained, jural war must choose the least costly. But vague as this principle appears, it carries us somewhat further than might at first be imagined. It does not leave the general in command of an army quite at liberty to choose the means by which he is to attain the necessary object on the principle *sed pro ratione voluntas*. It appeals from his will to his judgment, and binds him to weigh his materials before he uses them.

(A) *Life being the possession without which all other temporal possessions are worthless, must be the first object of belligerent economy.*

The relative value of life and property ought always to form the primary element in a general's calculation of the means by which a warlike end is to be attained, and this equally whether the end be victory or some strategic

advantage which may be conducive to victory. Where the lives of his men, or their health and consequent efficiency are in question, there is no expenditure of the other means which belligerency places at his disposal that may not be made. And this rule applies equally whether the resources be those of his own State, or of the State against which he is fighting. Belligerency confers rights in both directions, and the principle of economy acts equally in both. The least valuable objects must always be taken first; and wherever a question arises between the sacrifice of life and the sacrifice of property, property must be sacrificed.

It is on this principle, the soundness of which is incontestable, that the laws of war have been constructed, and that, as between civilised nations, however imperfectly they may be observed, they have attained to considerable theoretical completeness. In approaching this subject, then, the first question which presents itself is, What are the rights which the recognition of belligerency confers on the belligerent, and what are the objects, animate and inanimate, which it places within his reach?

(B) *The rights which belligerency confers over life and property alike are jura publica.*

It is impossible to imagine a stronger proof of the imperfect character of the law of nations than is to be found in the fact that it is still an open question whether war can be jurally waged by States only in their corporate capacity and with their corporate resources, or whether it embraces the individual members of the States at war, and the property which belongs to them as private persons. The former view

is that which has been adopted—though not, as we shall see when we come to speak of maritime war, very consistently—by the Institute, and in favour of which the tide of modern opinion appears to have set; whilst Mr Hall¹ has shown, satisfactorily I think, that the latter can still claim the preponderance both of authority and of custom. The opinion which assigns an exclusively public character to war is generally supposed to remount no higher than to Rousseau and Portalis; but M. Nys, in his learned treatise on the *Laws of War and the Precursors of Grotius*,² has traced it to Honoré Bonnor or Bonet, the author of *L'arbre des Batailles*³ towards the end of the fourteenth century.

But, be its history what it may, it is the doctrine which appears to me logically to result from the principles of the law of nations. Springing as it does from the recognition of the existence of the State as a political entity, the right to vindicate that existence can belong to the State only in its political capacity. The rights which result from the fact of jural war, are thus *jura publica* as opposed to *jura universalia*, or *jura communia* in the one direction, and to *jura privata* in the other. In assuming the attitude of a belligerent by a declaration of war, the State stakes on the issue everything which belongs to it *qua* State, its own political existence included; and it challenges its opponent to the same unlimited venture. Each State says to the other State,—“unless you accept my ultimatum, I shall use every means within my power, either to force it upon you, or to deprive

¹ Hall's *International Law*, pp. 56-58.

² Pp. 78 and 120.

³ M. Nys has since published a complete edition of this curious and interesting work.

you of existence as a separate member of the family of nations. In the event of your continued resistance, I shall either conquer you and absorb you myself, or hand you over to another State."

Nor does the jural character of the combat necessarily stop even here. In order to give certainty to the result, the process of political exhaustion may be jurally extended to the resources available to the combatants in virtue of the sympathies and antipathies of friends and foes. Nothing political that would contribute to bring about the "bitter end" of political annihilation is necessarily excluded from the jural conception of belligerency.

It does not follow, of course, that the "bitter end" must be, or even that it may be, jurally reached. All that is requisite to determine the true relation between political entities in conflict, is that the "bitter end" shall be brought clearly into view. Fear, as we have seen, may be called into play as a jural factor by pacific intervention; but if war is entered on, its attainment may jurally, though scarcely practically, involve the political annihilation of either, or even of both combatants. As in a duel it is possible that both shots may prove fatal, so in a war both States may be reduced to a condition of anarchy which is equivalent to political death. Nor is it wholly inconceivable that this event should occur without very seriously affecting the private interests of the inhabitants of either State.

Further, as it is the political life of the State that is alone at stake, that life can be defended only by political means. The rights of belligerency, consequently, cease when these

means are exhausted. Jural warfare does not permit either combatant to commit social or material suicide, or even to protract social or material exhaustion by prolonging a struggle which has ceased to have political significance, or which cannot be supported by means which are at the disposal of the State. War carried beyond the point of determining which of the two States, without exceeding the means which belong to it as a State, can force its ultimatum on the other, degenerates into rebellion by the vanquished against the victor—into a declinature by the vanquished to accept the judgment of the tribunal to which he has himself appealed.

There being no longer two nations in the field, the conflict has lost its international character in fact, and consequently in law, and become a war of individual vengeance or private revolt against public authority. It is a war of this kind which the indiscreet advocates of Irish independence are continually urging Ireland to prolong, or to recommence against England, and the anti-political and anti-jural character of which Mr Froude has justly stigmatised.¹ Such a war

¹ These and the corresponding remarks, p. 33, have of course no application to political agitation for the repeal either of the Irish Union with England or any other. Unions, whether effected by conquest, succession, or mutual agreement, are mere political arrangements. They exist only for the benefit of the parties united, and have no claim to continue if they cease to promote that object. The Irish Home-Rule party are quite entitled to move in Parliament every session for the repeal of the Union; and if they can satisfy English and Scotch members that their country is capable of self-government, the minority in which they would find themselves, in the first instance, would, no doubt, diminish year by year. The only right which Englishmen have to govern Irishmen, arises from the inability of Irishmen to govern themselves. If English officials were appointed in Scotland, we should, in a month, have a far more formidable Home-Rule party in Scotland than ever existed in Ireland; and as Scotchmen pay more taxes per head than Englishmen, and nearly twice as

affords no ground for belligerent recognition; it is not belligerency in the technical sense. If neutral States can be prevailed on to exchange neutrality for single intervention, the case will, of course, be altered, and belligerency may again be recognised. France and England, by intervening in favour of Poland, could, at any time, have given a jural character to her struggles against Russia; but they could not have recognised Poland as a belligerent, without coming to her aid, because such belligerency could have had no adequate basis in fact. In the case of the Southern States of America, on the other hand, there was a measure of political life and organisation which seemed to give chances of success sufficient to justify belligerent recognition. The Southern States professed to fight as one single political entity, and did so fight, very bravely, up to the point at which they abandoned the unequal struggle.

Again, in the case of mutual political exhaustion, belligerent recognition jurally ceases at the point at which *jura universalia* or *jura privata* are encroached on. The law of nations spreads her wings over the interests of humanity, and shelters the sanctity of the hearth and the home. When States in paroxysms of hatred or fanaticism begin to feed the conflagration with the elements of human life and progress, the period for double intervention has arrived.

I am quite aware that in accepting the modern doctrine of the exclusively public character of belligerency, or, in other words,

much as Irishmen, unless the Imperial Treasury shows more liberality to Scottish institutions than it has done for many years past, we shall probably soon have a cry for Financial Autonomy.

that "war is a relation of a State to a State and not of an individual to an individual," I am conceding what Mr Hall¹ justly observes has been claimed as "the argumentative starting-point of attack on the right of capture of private property at sea." Whether it be a starting-point which justifies that attack, is a question which I reserve for future consideration.

For the present I shall assume that *jura publica* alone are at stake, and the rule with reference to *jura publica* seems to be that belligerent recognition warrants their entire exhaustion, but that it does not travel beyond them either into the wider region of universal human rights, or into the narrower region of individual rights. The question of the limits of jural belligerency thus identifies itself with the question of the limits of State right; and this question, as it seems to me, will be best determined by eliminating from the rights of the State those which, though manifested in the concrete within its borders, belong either to mankind as a whole, or to man as a person.

CHAPTER XI.

JURA UNIVERSALIA ARE EXEMPTED FROM THE RIGHTS WHICH BELLIGERENCY CONFERS.

In studying the doctrine of recognition, we have seen that the separate existence to which the State lays claim is not an isolated existence. On the contrary, it is an existence which

¹ *International Law*, p. 60.

binds it to the members of the family into which it is admitted by new duties corresponding to the new rights which it recognises.

These new rights and new duties are, as it were, the tendrils by which it clings to, or rather the ducts by which it draws nutriment from the parent stem, and it is on their preservation that the permanence of its international existence depends. Now these rights, with their corresponding duties, consist in the mutual recognition by the recognised State and the recognising States of the ultimate objects of human existence, and in their mutual respect for the means by which humanity struggles on to the attainment of these objects. In allowing the State to assume a character of conditional independence, and emancipating it from the restraints of that guardianship which, as we have seen, is the jural relation between civilised and barbarous States, the recognising States reserve to themselves, for the common benefit, certain rights of supervision, closely analogous to those which the State itself reserves over its free and adult citizens.

International, like national citizenship, involves duties by the States which are its recipients, both to humanity in the aggregate and to the human individual, and places both classes of duties under the protection of the recognising States. As national citizenship can be jurally exercised only in accordance with the rights of the nation (*jura publica*) and the rights of the individual (*jura privata*), so international citizenship can be exercised only under the corresponding obligations which international recognition imposes. Let us try, then, to define these obligations.

Of the persons and things which the laws of war remove from the arena of international strife, on the ground that the rights of humanity, as represented by recognising States, override those of the separate States recognised, the following enumeration may perhaps suffice.

(A) *Persons.*

1. *The clergy or ministers of all religions.*—This exemption rests on the assumption that, whatever may be the value of religious teaching in other respects, its tendency will be to inculcate a morality higher than that of the community to which it is addressed. The law of nations being an ethical and not a theocratic system, does not presume to enter the theological field, and expressly repudiates all wars for the propagation of dogma or of ritual. The Thirty Years' War, like the present German conflict with Ultramontaniam, was professedly a political, not a religious war; and even as regards Mahometanism, or heathenism, it is only in so far as the immorality of their doctrines is politically manifested that their ministers sink to the level of ordinary non-combatants.

2. *The clerisy, or cultivators of science, learning, and art,* which know no political boundaries.

3. *Legislators and ministers of State, including sovereigns,* except when engaged in the direct performance of military duties.

4. *Judges, magistrates, and practising lawyers,* on the ground that they are engaged in administering the municipal system which the interests of humanity demand till another be established.

Even in the case of semi-barbarous States like Turkey, the

municipal law of which is not recognised by the States which profess to recognise its political existence, this rule applies; and some respect, beyond that shown to ordinary non-combatants, might be fairly claimed even for a Turkish *kadi*, on the ground that the law which he is supposed to administer to his fellow-countrymen is preferable to no law at all.

5. *Physicians and surgeons, apothecaries, dressers and nurses in hospitals, and all other medical persons*, whether engaged in private practice, or serving in the field.

It is in the name of humanity that the Red Cross Association steps in between the combatants and lays claim to the wounded indiscriminately on both sides.

6. *Correspondents of the press.*

In addition to the officials of the *Croix Rouge*¹ as the representatives of neutral beneficence, there is another class of representatives whose recent appearance on the scene of conflict marks the growth of sympathy and the increasing sense of responsibility on the part both of neutral and belligerent nations. Before quitting the subject of those rights which, in virtue of their universality, transcend the rights of belligerency, it thus becomes important that we should determine the jural position of those non-combatant critics and reporters whose labours now exercise so great an influence on the communities who are the ultimate repositories of the powers which, for the time being, have been confided to the armies in the field.

The system of military reporting, as a private enterprise carried on by newspapers, began with the brilliant letters to

¹ *La Croix Rouge, son passé et son avenir*, par Gustave Moynier, 1882.

the *Times*, by means of which, at the commencement of the Crimean War, Dr W. H. Russell directed the attention of the British public to the abuses of "red tape," and to the horrible sufferings which our troops were enduring in consequence of the incompetence of the commissariat and transport departments. Though the information thus conveyed to England speedily diffused itself over the whole world, and thus produced important international effects, some of them very unfavourable to this country, it is obvious that no international question arose with reference to the jural character of the writer. Dr Russell was a citizen of the State whose army he accompanied. He was neither a spy nor a neutral; and whatever the effect of his communications might have been, there was no ground on which the enemy could allege that his interposition exceeded the rights which belligerency conferred on every Englishman. Neither, on the other hand, was Dr Russell entitled to any exceptional protection, on the ground that he was performing cosmopolitan functions. He was a belligerent, doing belligerent duty; and if he had been taken prisoner, he would have been in precisely the same position as any other civilian attached to Lord Raglan's staff.¹ Any claim which he might have had to consideration as a man of letters, had he continued to be a non-combatant, was forfeited by his participation in the war. The professed

¹ He would fall under the following provision of the laws of war approved by the Institute at Oxford in 1880 :—

"22. Persons who follow an army without forming part of it, such as correspondents of newspapers, sutlers, contractors, &c., on falling into the power of the enemy can only be retained for so long a time as may be required by military necessity." See Appendix No. III.

object of his labours was to promote the success of the English arms by bringing the force of public opinion in England to bear on the War Department. His were belligerent letters; and if they conveyed information which was of value to neutrals, or to the enemy, that was an accidental circumstance which in no way affected his jural position. Nor would the case have been altered had his criticisms been directed to the condition of the Russian in place of the English army. Whatever he could see or learn, either within the English or French lines, or by looking out from them, he could report, without either increasing his risks as a belligerent or earning for himself a neutral or cosmopolitan character. His conduct was wholly under the control of the English General, and he was responsible to him alone. However important and however accurate might have been the intelligence which he communicated, Lord Raglan was perfectly entitled to send him away, if he was of opinion that the publication of such news was prejudicial to his success. To his case Mr Kinglake's rule—"Let your General so govern the writers collecting news in his camp as to make them do good, do only good, to their country, and harm, only harm, to the enemy"¹—was really applicable.

But how would the matter have stood if Dr Russell had been the citizen of a neutral State, and his letters had been addressed to a neutral organ, as has so often been the case with him and his colleagues in subsequent wars? Is the neutral correspondent entitled to exemption from belligerent responsibilities on the ground that he is clothed with a cos-

metropolitan character, and is in performance of cosmopolitan functions? Is his reception and protection a condition which the law of nations imposes on belligerents or attaches to the rights of jural belligerency? Now the affirmative answer to this question is that which has been already made to it by the spirit of the times in which we live; and it is, I believe, one of the most important advances in the laws of war which we owe to this subtle factor of development. No civilised State, on the penalty of incurring the suspicions of the neutral world, could now venture to refuse to receive neutral spectators and reporters of its conduct within the lines of its armies in the field. Neutral nations occupy the position of seconds to the belligerents in the terrible duel in which they are engaged; and as they cannot be directly present, the presence of those on whose intelligence they can rely is of the utmost importance in bringing to their knowledge violations of the laws of war which, unless checked by the publicity they receive, may call for the suspension or withdrawal of belligerent recognition, and in extreme cases may even give rise to intervention. On these grounds neutral States, as a logical result of rules of the law of nations already universally accepted, are, as it seems to me, jurally entitled to insist on the reception and protection of correspondents whose respectability they are willing to guarantee. So long as such correspondents refrain from all direct interference with the war, and report nothing that is untrue, they are, moreover, in the discharge of cosmopolitan functions, which, apart from their character as neutrals, ought to protect them from molestation from both combatants.

But though the rights of the neutral correspondent, both from a neutral and a cosmopolitan point of view, are conditioned by his telling the truth to the neutral world, it would be too much to demand of him either that he should tell the whole truth that may come to his knowledge regarding the belligerent whom he accompanies, or that he should tell it with impartiality. The ground of this reservation is that no belligerent can be expected to admit correspondents within his lines unless assured of their personal sympathy, and, to a certain extent, that of the organs they represent. So careful, indeed, are belligerents in this respect, that a case has been brought under my notice in which admission was refused to a correspondent, though he was the bearer of a letter from the Foreign Secretary, till it was endorsed by private letters from the leaders of the Opposition.

Even after a correspondent has been duly registered at the headquarters of the belligerent, and has been photographed and supplied with a badge which he wears for his protection, the slightest suspicion that he is giving aid to the enemy, whether intentionally or unintentionally, by the intelligence which he publishes, will, of course, lead to his instant dismissal. For obvious reasons, the extent to which he may publish information regarding the military operations, or preparations, that come under his notice, is wholly within the control of the General in command. If the infidelity of the correspondent to his entertainers should have gone so far as to lead him to accept pay from the enemy for betraying their secrets, he would of course be justly liable to be shot as a spy.

But what would be his jural position, if, on the other hand, as is far more likely, his partiality for them should carry him from words to deeds? Many correspondents are military men, and, I understand, they are occasionally permitted to wear the uniform of the force which they accompany. What if, in such circumstances, a correspondent should take part in actual hostilities, and fight on the side of his friends and hosts? In the event of a number of officers being killed, and their men left without leaders, the temptation to interpose might present itself to a spirited man in the aspect of an imperative duty; and in reality might be an act of heroic virtue. I am not aware that the case has occurred; but, on the principles of the law of nations, I think that the correspondent who yielded to this impulse, however greatly he might have merited the gratitude of the belligerent, would instantly lose all claim both to neutral and cosmopolitan protection. With the first act of hostility his neutral character would jurally cease, and in accordance with the logic, if not with the letter of the law of nations, his nationality would be changed from his former State to the State whose ranks he had joined. If he were taken prisoner, all that he could demand, or that his former State, or any other neutral State, could claim on his behalf, would be that he should be treated as a prisoner of war. In point of fact, however, his fate would be watched by the neutral world with exceptional care; and this care would probably extend itself to his fellow-prisoners, and act as no inconsiderable protection to them.

CHAPTER XII.

OF THE UNIVERSAL DUTIES, *OFFICIA UNIVERSALIA*, RESULTING
FROM THE LIMITS WHICH UNIVERSAL RIGHTS, *JURA UNIVER-*
SALIA, IMPOSE ON THE EXERCISE OF BELLIGERENT RIGHTS.

The rights of civilisation, as *jura universalia*, impose corresponding duties, *officia* or *debita universalia*, which limit not only the means which belligerents may jurally employ, but the manner in which they may employ them.

We have seen that the presence of that measure of ethical life—of reciprocating will and reciprocating power—which humanity, for the time being, characterises as civilisation, is one of the conditions of the recognition of the State as a political entity. As clinging to its public, this condition necessarily clings to its belligerent rights. The State cannot preserve its political at the sacrifice of its ethical life; for if it ceases to be a State ethically, it ceases to be a State altogether. But the conception of ethical existence being a progressive conception, no exhaustive category of actions which are permanently permitted or forbidden to belligerents, on the ground of their conformity or non-conformity with this conception, can be constructed. All that can be said, generally, is that the principle of economy here comes again into play, and that all expenditure of the means of progress belonging to the belligerent States, even in their

public capacity, which does not contribute to victory, is anti-jural. With a view to the vindication of the principle of belligerent economy, the following rules may be stated as existing laws of war.

1. *Prisoners of war.*

Life, being the source of all human right, and the only source for the loss of which no compensation is possible, must, as we have seen,¹ be the first object of human economy, whether in peace or in war. On this ground, the right to sacrifice or imperil life which belligerency confers on the State, belongs to it only for belligerent purposes. Combatants who throw down their arms are entitled to claim from humanity, as a whole, that protection which their own State is unable to afford them. By abandoning their own State they become citizens of the world. As such they are non-combatants; and, apart from such precautions as may be necessary to prevent them from resuming their combatant character in the existing war, they are entitled to be treated like other non-combatants. Their lives, ceasing to be *jura publica* under the dominion of belligerency, have become *jura universalia*, when seen from one point of view, and *jura privata*, when seen from another; thus, by a double portal they re-enter the sphere of the normal relations. Though separated, for the time being, from any political community, they once more belong to humanity and to themselves. And as of their lives, so of their liberties. It is of their combatant liberty alone that belligerency can dispose.

Further, as the right to life implies a right to the

¹ *Ante*, pp. 56, 57.

conditions of life, the law of nations imposes upon the capturing State the duty of supplying them with the necessaries of life. To a certain extent this rule is held to extend even to such wants as may have been engendered by habit, or may be conventionally attached to the rank of the prisoner. But it is as belligerents alone that the opposite belligerent knows them, and it is belligerent rank alone which can claim belligerent recognition. Officers are entitled to a preference over privates, and over each other according to their rank. But two officers of the same rank will be treated equally, though the one be a commoner and the other a peer. Of the limits of the rights of prisoners in this direction the captor must, as a rule, be permitted to judge. When Napoleon I. was imprisoned in St Helena, a far more serious inroad was made on the ordinary conditions of his existence than on those of his nephew when he was imprisoned in Wilhelmshöhe; but it can scarcely be said that, after the then recent experience of Elba, the severity of the Allies exceeded the necessities of war.

The character of the maintenance supplied to prisoners must be the same as that of the troops of the captor. The costs of the maintenance of prisoners fall ultimately to be defrayed by the vanquished State, by whose fault it must logically be assumed that they have been occasioned. These expenses, consequently, form part of the indemnity which the victor is entitled to claim at the termination of the war. But as the retention of prisoners in idleness, possibly for many years, would be a waste of the resources of humanity, and as the vanquished State may possibly be bankrupt, and unable to meet its liabilities, there seems

no reason why prisoners of war should not contribute by their labour to the cost of their subsistence. It is only to this extent that the statement of Lieber, in the celebrated instructions which he drew up for the American Government,¹ that "prisoners may be required to work for the benefit of the captor's Government, according to their rank and condition," seems jurally admissible. As freedom is a right inherent in humanity, no compulsitor to labour, as it seems to me, can be jurally imposed on prisoners of war, beyond the alternative of starvation, to which they would have been exposed had they been idle in their own country. "In the sweat of thy face shalt thou eat bread" is a universal law which the fact of capture in war neither imposes nor removes.

But compulsory labour in any further sense, even if confined to works which have no immediate reference to the existing war, amounting as it would do to modified slavery, is at variance with the principles of jurisprudence, and is, I believe, generally forbidden by modern States.

Moreover, inasmuch as the prisoner, in submitting to imprisonment, must be regarded as still doing duty for his State, his maintenance, if provided by his own industry, like his pay, forms a municipal claim on his part against his own State; whilst, on the part of the victor, it is a deduction which jurally falls to be made from the indemnity. The vanquished State owes it not to the victor, who has already received it, but to the prisoner himself, whom it was bound to maintain.²

¹ Appendix No. I. On this and other points of modern practice consult also Appendices II. and III.

² *Institutes of Law*, p. 22.

Lastly,—to his earnings, beyond the expense of his maintenance by the captor, the prisoner is clearly entitled as an individual. A celebrated physician or surgeon, whilst on parole, may make a large income in a hostile capital, and to this neither of the belligerent States has the slightest claim. I do not see that the capturing State is even entitled to retain it till his liberation. In such a case the prisoner would, of course, be bound to pay taxes to the State in which he was a captive, like any other resident foreigner. But the only mode in which his captivity could come to an end, during the subsistence of the war, apart from his being ransomed, exchanged, or recaptured, would be by his renouncing his nationality, and being naturalised in the State in which he was captive.

2. *Refuge.*

The subject of the refuge of prisoners on neutral territory belongs to the doctrine of Neutrality.

3. *Reprisals.*

The Conference of Brussels in 1874¹ failed to deal with the horrible method of retaliation for a violation of the laws of war, by putting prisoners or other non-combatants to death; but I hold that it is clearly forbidden by the principles above developed. The fact that one State has murdered its prisoners, or even refused quarter, cannot possibly justify the other State in following its example. The captive, or other non-combatant, is a private citizen of the world, and the rights of humanity inherent in him in that capacity, which emerge the moment that he has thrown down his arms, override the rights of both belligerents. If he himself has renounced them by crimes

¹ Appendix No. II.

which he has committed in his private capacity, his position is altogether different. He is no longer under the shelter of his belligerent rights. If, for example, after accepting quarter, he should kill his captor, the capturing State may justly put him to death; but in that case it deals with him, not as a prisoner, but as a murderer. His punishment is personal, not vicarious, and does not require the theory of "reprisals" to justify it. Even in the "extreme cases" of the violations of the laws of war, to which the Russian project proposed to confine reprisals, it appears to me that the only jural course of action is for the State thus injured to urge neutrals to withdraw their recognition of belligerency, and to intervene on its behalf.¹ Such an appeal, if substantiated by facts, would, as it seems to me, put an end to the only justifiable plea for non-intervention on the part of all States to which intervention was not a physical impossibility, or was forbidden by their inability to ascertain the truth of the allegations, or which of the combatants was most in the wrong. Even where no intervention occurred, the withdrawal of the rights of belligerency from one of the combatants, by depriving the war of its public character, would of course place him at the mercy of the municipal laws of the other. Reprisals, as mere deterrents, would still be forbidden; but prisoners might then be punished as rebels. Their treatment might possibly be pretty much the same in the one case as in the other, but they would at any rate have the benefit of knowing beforehand that they were not under the protection of the law of nations.

¹ *Correspondence relating to Conference at Brussels*. No. I., 1874, p. 17; and No. II., 1875, p. 6. See Appendix No. II.

(B) Things.

All material objects necessary for the performance of the duties appertaining to the classes of persons above-mentioned: Churches, learned and scientific institutions, with the lands, property, endowments, and other emoluments belonging to them; ships engaged in scientific discovery, works of art, historical monuments, legislative chambers, courts of justice, hospitals, ambulances, and medical stores. This protection does not, of course, cover any property which belongs to the State in its political capacity exclusively—such, for example, as the public treasury or Crown lands, and palaces or jewels. These, as *jura publica*, fall fairly within the scope of jural war. The State holds them *qua* State; and its citizens are interested in them only *qua* citizens. They cling to the political life of the State, and must share its fortunes, and the fortunes of its citizens, not the fortunes of humanity or of private persons. On this ground, Balmoral and Osborne, as the Queen's private property, would be in a different position from Windsor and Holyrood.

In carrying on legitimate military operations, it is often physically impossible to distinguish between objects, whether animate or inanimate, which belong to one or the other of these classes. In this case their seizure or destruction cannot be regarded as a violation of the laws of war. The burning of the library at Strasbourg, and even the injury done to the cathedral, by the Germans, probably admitted of this defence; and the same may be said of any injury which was unintentionally done to the priests or the librarians. But had the library or the cathedral been shelled with

truth that Bluntschli has said, "On autorise, on défend, sans savoir précisément pourquoi."¹ The enumerations contained in the books, and the proposals of the International Military Commission at St Petersburg in 1868, to prohibit the use of all explosive projectiles weighing less than 400 grammes, are really of no value. They certainly would not be respected in anything approaching to an embittered war. But the science of destruction is probably only in its infancy; and if war is to continue, the subject of regulating the use of the terrible weapons which it may place in the hands of combatants, is one which may force itself on their attention. All that can be done in the meantime is to confine warfare, as far as possible, to States in their public capacity, and to induce them to abandon, by common agreement, the ruinous race of preparation in which they are at present engaged,—a race rendered specially costly by the rapidity with which discovery follows discovery, and invention supersedes invention.

CHAPTER XIII.

JURA PRIVATA ARE EXEMPTED FROM THE RIGHTS WHICH BELLIGERENCY CONFERS.

The distinction between the rights and duties of individuals in relation to the States of which they are citizens, and in relation to each other, is sharply and accurately

¹ *Droit Codifié*, § 560, p. 294. Field, 2d ed., p. 495.

defined by all municipal systems; and in recognising these systems the law of nations recognises this distinction. It is this distinction, as we have seen, which marks the limits of private international law, or, in other words, determines the rights and duties which, when recognised municipally, shall receive international recognition. If a man is a husband or a father, a debtor or a creditor, in his own State, these characteristics cling to him wherever he goes; but he is a voter, a magistrate, a tax-payer, or a tax-gatherer only at home.¹ Everything that belongs to him as a man is *juris gentium*, everything that belongs to him as a citizen is *juris gentis*.

Nor are his rights as an individual invalidated by war; for during its continuance, and up to the point at which one municipal system gives place to another, if that point should be reached, the courts of the one belligerent will recognise and vindicate the private rights of the individual members of the other, as in time of peace. Belligerency, as we have seen, is a public or State right, which involves only the political life of the State, and it is consequently with the public rights of the opposite belligerent alone that it has to do.²

Whatever the municipal law of either of the contending States, as that law existed at the commencement of the war, withdraws from the sphere of public, and assigns to that of private rights, thus falls beyond the scope of belligerency. The *jura privata* which are exempted from belligerency are thus determined not by the law of nations directly, but by the municipal laws which the law of nations recognises.

¹ *Ante*, vol. i. p. 326.

² *Ante*, p. 62.

Suppose France and Germany to be at war, the private rights and duties of Frenchmen and Frenchwomen, *as defined by the law of France*, are exempted from the belligerent rights of Germany,—and *vice versa*. Their public rights and duties, on the other hand, *as similarly defined*, fall within their belligerent rights respectively. Nor is this relation affected by a belligerent occupation, however complete. Alsace and Lorraine, up to the conclusion of the treaty of peace and their final transference to Germany, were in the same position in this respect as the other provinces of France, and Germany was bound by the law of nations to administer French law to them.

CHAPTER XIV.

OF THE DISTINCTION BETWEEN INALIENABLE PRIVATE RIGHTS AND THOSE WHICH ARE ALIENABLE.

At this point another distinction, capable I believe of far more important practical uses than have hitherto been derived from it in the conduct of war, falls to be taken. The distinction to which I now refer is that between private rights which are inalienable and those which are alienable by the individual will, and the alienation of which may or may not be imposed by the general or State will. To the former class of rights belong, as a rule, all strictly personal rights, or rights of *status*; to the latter belong all proprietary and possessory rights.

1. *Of inalienable private rights.*

The simplest test of the alienability or inalienability of a right, or of its object, will be found in the consideration whether or not it can be bought and sold in accordance with the municipal law of the State in which it is locally situated. Applying this test, the following objects may be declared inalienable :—

1st, Life ; 2d, Liberty ; 3d, Domestic and family relations ; 4th, Religious and moral convictions.

A man cannot sell his life or his liberty, or the life or liberty of his fellow-creature, seeing that slavery, even where municipally recognised, is now forbidden by the law of nations. He cannot sell his wife, or his child, or his creed, or his conscience. His own State cannot jurally compel him to do so ; and if it did so formally, the law of nations would repudiate the transaction. All such private rights are incapable of being converted into public rights by the exercise either of public or private will, and are thus unconditionally and permanently removed from the sphere of belligerency. They are rights which are inseparable from rational and responsible existence ; and in dealing with them we may still regard ourselves as in the region of those *jura universalia* of which we formerly spoke. Even when the action of the State is in abeyance, humanity steps in to protect the hearth and the home, and declares the sacrifice of the humblest life, and the violation of the poorest household, a breach of the law of nations. So long as the non-combatant character is strictly maintained, no extremity of warlike necessity can justify interference with personal rights or domestic relations. The sack of a town, the laying waste of a district for strategic purposes,

a bombardment directed against private dwellings, and similar acts, though by no means unknown, I fear, to the practice of modern warfare, are unquestionably anti-jural, and are strictly forbidden by the laws of war as professed by all civilised States.

2. *Of alienable private rights.*

All private rights, whilst they continue to be such, we have seen to be removed from the sphere of belligerency. But all private rights are not inalienable. Private property, of whatever kind, real or personal, animate or inanimate, which may be bought or sold, is held by its possessor, subject to what may be called the *dominium eminens* of the State of which he is a citizen. The State may appropriate it to its uses, and it is consequently dependent on the fortunes of the State. As potentially though not actually public, all property of this class falls, or may fall, within the scope of belligerency. The principle of economy no doubt continues to limit the form of its application; the *minimum* alone must be taken. But within the limits of jural war, this principle places no absolute limitation on the extent to which it may be ultimately applied. War on commerce is no more forbidden by the law of nations than war on life; on the contrary, if the ends of war can be attained by the former, it is the latter, as we have seen, which the law of nations forbids. Whilst the one belligerent levies requisitions and seizes public property, the other imposes taxes to any extent that really contributes to secure victory or to avert defeat. Beyond this point the war itself, as we have seen, becomes anti-jural, and the law of nations forbids its farther prosecution.

Now mark the practical results which logically follow from

these indisputable principles. The belligerent State which seizes the property is liable to the proprietor in the first instance, and must either pay him in ready money, or by an acknowledgment which it will ultimately make good. But on the cessation of belligerency, the vanquished State becomes the debtor to the private persons whose property has been consumed by a war for which, *ex hypothesi*, it was to blame, and the victorious State only as cautioner for the vanquished State.¹

Be the issue of the conflict what it may, the individual non-combatant is entitled to be indemnified in his private capacity, however great may be his losses in his citizen capacity, in consequence of the share of the indemnity which he may be called upon by his own State to contribute.

I have here sketched the theory on which all honest warfare is professedly conducted, and which is in accordance with the absolute or natural law of belligerency with reference to

¹ Bluntschli, so far as he goes (§ 653), puts this matter on its true footing: "Il faut dédommager les propriétaires, et d'après les principes du droit naturel, cette tâche incombe en première ligne à l'état que saisit ces biens et les emploie à son profit. Si les réclamations dirigées contre cet état n'aboutissaient pas, l'équité exigerait que l'état sur le territoire duquel la réquisition a eu lieu fut rendu subsidiairement responsable." But he fails to explain that in the event of the State on the territory of which the requisition was made proving victorious, it will hand over the responsibility to the vanquished State, and acknowledge its own liability only as its cautioner.

Hall, who quotes the above passage, recognises the justice of the principle, though he does not attach to it what I conceive to be its full importance, and does not follow it out into its results. "It is often impracticable to provide subsistence and articles of primary necessity for an army without drawing by force upon the resources of an enemy's country; labour is often urgently wanted, and when wanted it must be obtained; but there is nothing to prevent a belligerent from paying on the spot, or giving acknowledgments of indebtedness binding himself to future payment."—*International Law*, p. 367.

private property, both on land and at sea. I must now endeavour to indicate the means—very imperfect in their practical operation, no doubt—by which this law is attempted to be realised by civilised nations.

CHAPTER XV.

OF THE CONVERSION OF ALIENABLE PRIVATE RIGHTS WHICH ARE EXEMPT FROM BELLIGERENCY, INTO PUBLIC RIGHTS WHICH FALL WITHIN ITS SCOPE.

Assuming the confiscation of private property for warlike purposes, under all circumstances, to be anti-jural,¹ and this whether by the State to which the private person belongs, or by the State at war with it, whilst, on the other hand, either State may take possession of such private property as in its own nature is alienable for warlike purposes, the question comes to be—How are these two assumptions to be reconciled? How can a man's property be taken from him, in violation of his immediate will, otherwise than by robbery? How can his will as a citizen, which must be assumed to be in favour of the war, be made to override his will as a man, which, in this particular, is admittedly opposed to it?

Now the device which has been fallen upon for the attainment of this object is that of a compulsory sale, which, though

¹ *Annuaire*, 1878, p. 110 *et seq.*

in violation of his individual and proximate will, is presumably in accordance with his citizen and ultimate will.

(a) *Of compulsory sale to the State of which the proprietor is a citizen.*

If the sale is enforced by the State to which the proprietor of the object belongs, the transaction does not differ in principle from an ordinary sale to the State for a public purpose, under an Act of Parliament. Suppose a man's garden is required for the erection of a battery, the executive government—which a declaration of war, even in constitutional countries, puts in the place of the legislature for warlike purposes—takes possession of the garden and pays the market value of it. The proceeding is arbitrary, and the sacrifice considerable; but it is not more arbitrary than the levying of taxes, or necessarily more oppressive than the construction of a railway which runs through a man's dining-room, or of a dock on his lawn. The hardship to the individual is the price which he pays for the privileges of the citizen. If he is patriotically disposed, he is proud and satisfied. If not, he shrugs his shoulders. The whole proceeding is municipal, and, though it belongs to the laws of war, can scarcely be said to belong to the law of nations.

(b) *Compulsory sale to the opposite belligerent for ready money.*

As either belligerent may seize the public property of the other, to the extent that will contribute to the attainment of victory, so either belligerent may, to the same extent, seize such private property as the other belligerent *might*, for this purpose, have seized and *converted into* public property. The right to enforce such conversion is a public right; and if jural

belligerency confers a right to what the State possesses, it confers a similar right to what the State is entitled to possess.

The simplest, fairest, and honestest mode of taking possession of private property, is for the belligerent to pay to the non-combatant, as his own State presumably would have done, the market price of the property which he seizes, writing down the amount in his own book as part of the indemnity to be claimed from his opponent in the event of victory. This is the practice with which all civilised warfare begins, and to which it is the pride of our own armies consistently to adhere. But it is not every State that can carry on war on this principle; and no State can continue to do so if the war comes to be at all of an exhaustive kind.

Nor is it perhaps always desirable that a practice should be adhered to which takes from the levying of contributions the character of a means of bringing the war to a conclusion. The separation between individual and State interests which such an arrangement occasions, may, in certain circumstances, even lead to a prolongation of the war for private purposes. The governing will, in its last analysis, is only the aggregate will, and that will is not likely to be very strenuously exerted for the termination of a war which, though it increases taxation, compensates for it to the individual tax-payer by bringing an exceptionally good market to his door. So long as foreign gold flows freely into his pocket, he may not be very deeply impressed with the consideration that it may ultimately flow out of the public pocket of his own State. The military element, always bent on war, may quite conceivably receive dangerous support from the mercantile element in the

State; and a conqueror may be compelled unnecessarily to sacrifice life in consequence of the extent to which he has spared property, or of the extravagant price at which he has purchased it. In place of paying the non-combatant ready money, then, it may even be desirable to secure him against ultimate loss by some other means which shall not have the effect, to the same extent at least, of separating his private interests from the public interests of the State to which he belongs.

(c) *Of compulsory sale for credit.*

This is effected, more or less perfectly, by granting to the owner, for the property of which he is immediately deprived, a species of acknowledgment known by the technical terms of a *quittance*, *quittance d'usage*, or *bon de réquisition*. As I here use these terms for the first time, it may be desirable that I should at once explain their meaning, and this the rather as their use ought, in my opinion, to be greatly extended in the practice of war.

A *quittance d'usage* is a document of debt somewhat resembling a bill which the one belligerent draws on the other, and which he endorses to the private person whose goods he has taken, or whose services he may have found it necessary to exact. As in ordinary bills, the drawer becomes liable to the indorsee in the event of the bankruptcy of the drawee.

Germany, for example, in granting a *quittance d'usage* to a French peasant for his horse and cart, or for his own services in driving it, became jurally liable to him, as her private creditor, in the event of his being unable to recover the sum from his own Government. On the termination of the war,

these *quittances*, of course, are not included in the indemnity. They remain as private claims against the vanquished State, if it still continues to be a State; and the opposite belligerent steps in as the ultimate cautioner of the individual holder of the *quittance*, only in the event of non-payment. If, on the other hand, the vanquished State, or a portion of it, is absorbed by the victorious State, the latter accepts its debts to those who have become its own citizens, which have resulted from the war, just as it accepts any public debts which the annexed province may have incurred. In Alsace and Lorraine, Germany took upon herself the burden which, but for the absorption of these provinces, would have fallen upon France, and honoured her own bills. As regarded the other provinces, had France been bankrupt and unable to compensate her own citizens, their claims against Germany as drawer would have fallen within the scope of private international law, and the German courts, I have no doubt, would have enforced them against their own Government.

But the whole law of *quittances* is still in a very rudimentary state, and I cannot positively assert that such a judgment has been pronounced.

In land-warfare something like the arrangement here indicated is in actual operation. As to the practice of war, the best and latest evidence is unquestionably that of the military magnates who assembled at Brussels in 1874-75, and it may, consequently, be well that we should look into it before proceeding farther. Most Englishmen, I fancy, will agree with the Belgian delegate, M. le Baron Lambermont, that notwithstanding the disadvantages which I have indicated as occa-

sionally attending it, the fairest arrangement would be for each army to pay its own way at the time and on the spot, as our armies did during the great Napoleonic wars. But even when honesty is not carried to what most of our Continental neighbours, it is to be feared, would still regard as a Quixotic extent, it does not follow that no attempt is made in that direction.¹ "La valeur des quittances," says M. le Général de Voigts-Rhetz, "est réglée par l'usage. Celui qui sera vainqueur, comme celui qui sera vaincu, aura le devoir d'indemniser ceux de ses sujets qui auront en leur possession des quittances délivrées en temps de guerre. M. le Délégué d'Allemagne déclare qu'il ne connaît pas, pour sa part, de guerre où l'acquittement des obligations ainsi contractées ait fait surgir de sérieuses difficultés. On convient, en effet, à la conclusion de la paix, des dispositions à prendre à cet égard. Généralement le vaincu sera chargé d'indemniser lui-même les habitants du pays vainqueur, et ceux de son propre pays." When pressed by the Swiss delegate, Colonel Haussner, with the objection that "les quittances d'usage n'engagent en rien ceux qui les délivrent," and urged to bring them within the sphere of international law, he stated, not very consistently, perhaps, with his assertion that they were provided for by treaties of peace, the difficulty which might exist in imposing them on constitutional countries. "Dans ces pays, les emprunts forcés ne peuvent pas avoir cours sans l'autorisation des Chambres." But he added cynically, "Dans un autre ordre d'idées si la quittance n'a

¹ *Correspondence respecting the Brussels Conference*—Miscellaneous, No. I., 1875, p. 410.

pas de valeur, c'est que le gouvernement du pays occupé ne lui en donne pas."¹

In the absence of adequate municipal legislation, then, it is too probable that the theoretical arrangement here indicated, and which, as much as anything else, may claim to be the law of war, is often very imperfectly observed. Still, in the case of the Franco-German war, I suppose no German, or Alsatian who was treated as a German, ultimately suffered pecuniary loss, though many even of them were compelled to part with private property, and exposed to much suffering. If Germany had been defeated, France would certainly have held her liable for the loss of private property by French citizens.

As it was, France lost the suit, and she paid her own costs, in which those of her own citizens, as well as of the Germans, were included, or ought to have been included. On both sides forced sales were submitted to as inevitable consequences of a war, which itself must be assumed to have been inevitable. But that was all—at least theoretically it was all—that could be measured by money. In the war of 1866, I know, from private sources, that the Prussians paid the Saxons quite fully for the losses which they suffered from the occupation of Dresden; and there is no reason to doubt that Austria would have done the same. I cannot speak with the same confidence with reference to France; but I have been told that the French peasants, much as they are in the habit of blaming their rulers, do not generally complain of them on the ground that the *quittances d'usage* given them by the

¹ *Correspondence respecting the Brussels Conference*—Miscellaneous, No. I., 1875, p. 104.

Germans were dishonoured. That the Government at least professed to recognise them is plain enough from the fact that, on 6th September 1871, a law was enacted which bears the title, "Loi qui fait supporter par toute la nation française les contributions de guerre, réquisitions, et dommages de toute nature, causés par l'invasion."

In the next chapter I shall endeavour to show that there is not the least difference in principle, or the least necessity for difference in practice, between the seizure of a ship at sea and the levying of contributions on land, in so far, at least, as concerns compensation to the private owner,—except this difference, that there is far less difficulty in doing him justice in the former case than in the latter.

CHAPTER XVI.

OF THE CAPTURE OF PRIVATE PROPERTY AT SEA.

Before considering the question of the applicability of the system of *quittances*, which I have just described, to naval warfare, I must make a few observations on the burning question of the legitimacy of the capture of private property at sea. The subject is one which I approach with diffidence, because it is perhaps the only one of a serious nature on which, in common with most English jurists, I have hitherto had the misfortune to differ from my Continental colleagues. Like most differences between honest seekers of the truth, I believe that this difference has

arisen mainly from misunderstanding, and I, consequently, am not sorry that the necessity of stating my views with greater definiteness and fulness than I have yet done should here be forced upon me. If, in the form in which I shall now present them, they should commend themselves to the acceptance of foreign jurists, I shall be proud and happy; if not, I believe they will do me the justice to acknowledge that I have adopted them as what appear to me to be the logical results of the law of nations, and not from any exclusive regard for the interests of my own country, whether real or imaginary.

1st, Of the relation between the private owner and the State at war with that to which he belongs.

At the outset, let me repeat my acceptance of *the rule*—that *the capture for warlike purposes of all private property, as such, is forbidden by the law of nations.*¹

In what I have formerly said on this subject I have spoken quite generally. War being a public relation, entered into by States in their political capacity, and for public purposes, and not by their private citizens for private purposes, the rights which war confers are public rights only. The recognition of belligerency extends only to public rights, and affects only public property. Whatever belongs either to the State itself as a separate political community, or to the citizens of the State as constituting that political community, is subject to belligerent capture; whilst, on the other hand, whatever belongs to the inhabitants of the State, when regarded simply as belonging to the great community of mankind, and apart from

¹ “La propriété neutre ou ennemie naviguant sous pavillon neutre ou sous pavillon ennemi est inviolable.”—*Annuaire de l’Institut*, 1878, p. 111.

the relation in which they stand to the State of which they are citizens, or to any other State, is exempt from capture. *Jura privata* partake of the character of *jura universalia* to the extent of transcending *jura bellica*; and *no private ship can be jurally captured, either at sea or in port.*

2d, Of the relation between the private owner and his own State, when at war.

In organised communities *jura privata* rest on *jura publica*. It is the State which defines private rights and guarantees their enjoyment. The State, as a condition of this guarantee, is entitled to convert such of them as are requisite for its purposes into public rights, and the property which has been acquired in virtue of these rights into public property. As the State may jurally demand the personal services of its citizens for public purposes though it may thereby interfere with their private interests, so, in like manner, it may demand the service of their property, though it may thereby interfere with their private interests.

The form which this demand may assume is, of course, a municipal question; and, in considering it, we quit for a moment the sphere of the law of nations and enter that of public municipal law.

In normal circumstances taxation is the price which the citizen pays for the secure enjoyment of his private rights and private property. The State which affords to him this security may consequently levy taxes which it never repays except in the form of these commodities. As it neither asks the taxpayer's leave, in his private capacity, nor returns to him in kind what it took from him, it may be said to capture his private

property. But, in free States at any rate, it captures it not only for his own uses as a citizen, but with his consent—nay, by his instructions, as a citizen. It is the *civis* who robs the *persona* in order to protect him from being degraded into a *res*. So much for the action of the State in normal circumstances.

In abnormal circumstances, again, the State may go further than this. It may call on the individual, the *persona*, to contribute to its necessities not only from his general means, but by the sacrifice of special objects. It cannot intrude on the sanctuary of his universal rights,¹ but it may take from him, as we have seen, whatever may be bought and sold, provided that by paying him the market price, it makes his private loss a public loss, his personal loss his citizen loss, as far as possible. The State, moreover, is of necessity the valuator, so that, if the price which it pays be less than the value which the owner attaches to the commodity, his private rights are disregarded, and his property, to the extent of the difference, is confiscated. The State, it is true, has no right to impose needless hardships on individuals, and a reasonable *solatium* ought, of course, to form part of the price. But of the extent of the *solatium* the State is again the judge, and the citizen cannot stop the sale by demanding an extravagant *pretium affectionis*. All private property being held subject to the condition of its surrender for public purposes, the sale, like the taxation, is compulsory, and there is no difference between a ship and any other commodity.

So much for the relation between the State and its citizen *jure publico*.

¹ *Ante*, p. 83.

But when we return to the law of nations, we find that the recognition of belligerency confers on the belligerent none of these rights of interference with private property. The belligerent may prove in the end to be a far better friend to a private owner than his own State; but, whilst he continues to be a belligerent, he has no equivalent to offer him for his property, *jure publico*, and *jure bellico* the existence of the private owner is unknown to him. The belligerent, consequently, can neither seize the property whilst it is private property, nor can he force the private proprietor to sell it; for with the private owner, as such, he can *jure bellico* have no dealings at all. Till the private owner becomes the subject of the belligerent, by the negotiation of a treaty of peace, it is only through his own State that he can be reached; and the next question which arises is—Can the belligerent thus reach him, *jure bellico*? Does belligerency confer the right of controlling the will of the private owner, indirectly, by controlling the will of his State?

3d, Of the relation between the belligerent States.

Though belligerency does not entitle the belligerent to enforce a sale on the private owner, there can be no doubt that, in accordance with the law of nations, it entitles him to enforce a purchase on the State of which the private owner is a citizen. The belligerent *jure bellico* may compel the State to which the private owner belongs, to enforce on him a sale *jure publico*; and when this has been effected, it may *jure bellico* capture from the State the property which the State has thus acquired. Or if, from the circumstances of the case, the State itself is unable to carry out the transaction, the principle

remains unchanged though the belligerent himself takes its place, and holding the property to have been already acquired, grants to the private owner an acknowledgment by drawing a bill on his own State in his favour for payment of the price. Suppose the object to be a ship, the ship is here regarded as occupied territory; and the belligerent appoints the captain or supercargo to represent his State by purchasing the ship and applying it to belligerent uses, just as, in default of a municipal tax-gatherer, he appoints another in his place to collect the revenue, and apply it to the ordinary purposes of civil government, or to the payment of such requisitions as he may find it necessary to impose.

With the relation which this transaction may create between the private owner and his own State, so long as it continues to be a State, the belligerent has no concern. In the event of its final conquest and absorption, he himself, as we have seen, becomes the purchaser and guarantees the private proprietor against ultimate loss. By taking the place of the conquered State, he adopts the official whom he appointed to make the purchase in its name, as his own representative, and he becomes responsible for the price. It is a debt which he owes to his own subject *jure publico*, or, if the vanquished State is unable to meet the liability imposed on it, which he owes to the private owner in the character of an honest belligerent.

The only writer who has touched the marrow of this question at all is Ortolan, in the following passage, which suggested to me the solution which I have here offered.

“Il n'est pas à dire cependant que les coutumes qui exis-

tent aujourd'hui ne puissent, dans l'avenir, être améliorées. Ce qui reste d'hésitation ou de regret dans la conscience, suivant le sens intime de justice, à l'idée de la capture, par mesure de guerre, des bâtiments de commerce et de leur cargaisons, c'est qu'il y a là un heurtement, un antagonisme forcé entre le droit des États d'une part, et celui de la propriété privée de l'autre. Sacrifier, comme on le propose en théorie, le droit des États à celui de la propriété privée ne serait pas une solution, car se serait sacrifier le moindre intérêt et le moindre droit aux plus importants. Quelques puissances auraient beau s'y engager par traité, la nature des choses, aux premiers faits de guerre, reprendrait son empire ; de telles stipulations ne formeraient jamais qu'un droit conventionnel, mais non un droit général, parce qu'elles ne seraient pas dans la vérité du droit. Sacrifier sans retour, comme la pratique universelle l'a fait jusqu'à présent, le droit de propriété privée au droit des États, c'est faire céder ce qui est de moindre à ce qui est de plus haute importance ; mais il n'y en a pas moins un sacrifice des particuliers. La véritable solution sera celle qui séparera ce qui revient, d'une part au droit des États dans leurs moyens de guerre, d'autre part au droit des particuliers, et conciliera ces deux droits, autant que possible, dans leur conflit ; au droit des États, la capture des bâtiments de commerce et de leur cargaisons ; au droit de la propriété privée, dans certains cas particuliers et selon la nature et le but de la guerre, une réserve sur la valeur des objets saisis, à régler soit immédiatement, suivant des règles déterminées, soit à la paix. Voilà, suivant nous, le point extrême où la voie du progrès puisse conduire. Au delà il y aurait, non pas progrès, mais

perturbation; conséquences non pas utiles, mais funestes plus qu'on ne s'en doute à l'humanité." ¹

4th, Are there any special motives of humanity or morality which forbid the transference of property from the private owner to the State, and its capture at sea?

I shall here dismiss, with a very few remarks, the whole of the rhetorical and sentimental padding which fills so many pages in Continental treatises on this subject—to the effect that the capture of private property at sea is a barbarous practice, akin to piracy, and worthy of the much maligned middle ages. As Ortolan says, "On s'est beaucoup répété et l'argumentation est toujours la même." ² In so far as these allegations have any legitimate source, they either resolve themselves into the question of the possibility of honestly

¹ *Diplomatic de la Mer*, vol. ii. p. 49, 4th edition. M. Ernest Nya, in his treatise on *La Guerre Maritime*, after stating with his invariable candour the argument in the form in which I had presented it on various occasions (*Revue de droit international*, t. vii. p. 261, in the *Journal of Jurisprudence* for 1875, p. 681 *et seq.*; and in some letters which I addressed to the *Times*), remarks: "Le système défendu par M. Lorimer se trouve en germe dans la motion faite par Kersaint, le 30 mai 1792, au sein de l'assemblée législative de France. L'article 5 de la proposition portait, 'Les pertes que les particuliers pourront éprouver par le fait des corsaires sous pavillon ennemi, seront reconnues et vérifiées par les tribunaux de commerce, par-devant lesquels les parties lésées sont autorisées à se pourvoir par tout moyen de droit; et le montant de ces dommages formera l'objet d'une réclamation en indemnité, qui fera le préalable à tout accommodement ou négociation pour la paix.'" M. Nya's criticism is this: "Certes, cette doctrine ne nous présente pas la prise dans ce qu'elle a d'odieux; mais il est permis de douter que l'assimilation de la saisie à l'expropriation soit une idée bien juridique et on peut se demander si le paiement de l'indemnité serait suffisamment garanti au cas où l'État du capteur sortirait de la lutte vaincu et ruiné." My answer of course is, that the ultimate security of the private proprietor depends upon the honesty of the victor, which international law cannot guarantee.

² Vol. ii. p. 36.

carrying out the ordinary principles of belligerency in this particular direction, to which I shall again revert, or else they result from ignorance of the character of the transaction which really takes place when a ship is captured.

The abnormal, and, in so far, barbarous character of war, in every form, being admitted, the tests by which we determine whether any particular form of war is exceptionally barbarous have reference mainly to its effects on life and morals.

(A) Life, as the most precious object to its possessor, being, as we have seen, the first object of belligerent economy, our first question must be, Is the capture of private property at sea more destructive to life than any other form of warfare?

Now, so far is this from being the case, that it is the only form of warfare in which life is not even endangered. The capture of ~~an~~ unarmed merchantman by a ship of war is usually effected by the firing of a single gun across her bows, at a distance probably of a quarter of a mile. Resistance being impossible, a prize crew of disciplined men, commanded by an officer, is peaceably received on board, and not a blow, or even a discourteous word, passes between the parties.

The whole proceedings of the Alabama, which caused such consternation to the Northern States, and involved us in so heavy a pecuniary loss, in so far as they were directed against private shipping, did not cost a single life. Even her ultimate conflict with the Tuscarora, which was a public ship of war, was a trifling affair, scarcely to be compared to a skirmish of outposts on land. And yet it is this proceeding that Dr Gessner goes the length of saying¹

¹ *Zur Reform des Kriegs-Rechts*, p. 9.

reduces those who adhere to it to the rank of savages, who roast and eat their enemies. Had Dr Gessner known that this is the only mode of fighting that does not involve the necessity of killing our enemies, he might have improved on his picture of our bloodless banquets by asserting that we swallow them alive, as the whale swallowed Jonah! In contrast to a species of disputation so derogatory to the scientific character of those who employ it, let us hear what critics, whose sympathies we should less have expected, have said on the subject. Americans as a nation have always been opposed to a rule which places them at a disadvantage with a greater maritime Power than themselves; and it was on this ground, confessedly, that they insisted on making its abolition the condition *sine qua non* of their becoming parties to the declaration of Paris that privateering is abolished: yet look at what Mr Dana has written, and Mr Dudley Field has copied.¹

“It takes no lives, sheds no blood, imperils no households, has its field on the ocean, which is a common highway, and deals only with the persons and property voluntarily embarked in the chances of war for the purposes of gain and with the protection of insurance. War is not a game of strength between armies or fleets, nor a competition to kill the most men and sink the most vessels, but a grand, valiant appeal to force to secure an object deemed essential when every other appeal has failed.” Mr Dudley Field does not contest the truth of these allegations, or of those of M. Ortolan, to which he also refers, to the like effect; and he almost confesses that no answer can be made to the contention that, if war cannot

¹ *International Code*, p. 525.

be abolished, war upon commerce is of all others the most humane, and not the least efficacious form in which it can be prosecuted. But, like all persons who find themselves at fault in theory and are still resolved to hold on by a foregone conclusion, Mr Field throws theory overboard, and betakes himself to practice. "For a satisfactory solution of the question we must, however, look beyond theoretic considerations to the interests which are practically involved; and in this respect the question is this: Can private property be spared without seriously impairing the efficiency of military measures, as a last resort, for the settlement of disputes between nations bound so closely in pacific relations as those which may unite in this code?"¹

One would have thought that it was only by "impairing the efficiency of military measures," on one side or the other, that the settlement of disputes by war of any kind could be effected. But he proceeds: "And here it is to be observed that the interests of peace which are affected are much broader and more sensitive than those of war. The advantage of the existing rule is the pressure it puts upon the enemy to submit; the disadvantage includes, besides the actual loss of property and derangement of commerce during war, the immense losses sustained on account of the apprehensions of war during time of peace." By this I fancy he means the loss to the carrying trade, which, of course, can affect only the one of the two prospective belligerents which knows itself beforehand to be the weaker at sea, and which seems a very legitimate means of inducing it to keep the peace.


¹ *International Code*, p. 529.

“The measure of advantage, on the one hand, is not the actual loss inflicted during the war, but only the pressure indirectly brought to bear on the hostile government, through the sufferings of its citizens; while the measure of the disadvantage exceeds the actual losses, and includes those derangements of commerce which are so quickly felt when an apprehension of war arises, and from which recovery is so slow after peace has been established.”

In so far as this argument is not exclusively in the interest of the weaker maritime Powers, it will be obvious that it is entirely met by any arrangement which, by making the State responsible for private losses, converts them from an indirect into a direct means of pressure. The seizure of a bale of cotton, then, becomes as direct an attack on the hostile State as the killing of a man; and that some hostile States dread it more than “blood and iron” is pretty plain from the vehement hostility which they exhibit to it. The tender hearts of Americans and Germans recoil from the notion of sinking precious bales of cotton in the sea; but they did not shrink from covering their fields with the bleeding bodies of thousands of their own fellow-citizens not many years ago.

(B) Is war on commerce at sea more injurious to morality than the march of a hostile army, the billeting of soldiers, and the levying of contributions in a hostile country?

There is no respect in which war at sea, in all its forms, but more especially war on commerce, contrasts so favourably with land-warfare as the immunity which it affords from those abominable outrages on domestic life and female honour



which always more or less stain the latter. In the case of a vessel carrying goods exclusively, there are probably neither women nor children on board. Her seizure by a man-of-war is, consequently, a mere business transaction between men, whose private interests ought not to be involved in it at all, whose passions it consequently does not arouse, and which takes place so openly, before so many witnesses, and is on so large a scale, as almost to exclude the possibility even of dishonesty.

In the case of passenger or emigrant ships, again, the property of individuals is entirely separated from the goods in the ship; and as the captors are not hungry soldiers in want of a meal, or disorderly irregulars in search of plunder, there is no levying of contributions. All the inconvenience to which passengers are subjected is that of being carried to another port, and sent to their destination by the captor after some delay. Now that privateering has been abolished by the Treaty of Paris, the discipline of the ship passes from the hands of the captain into the hands of a commissioned officer in the navy, and is more likely to be improved than deteriorated by the change. As regards neutral property no difficulty arises, as it has never been subject to capture by this country, and is now universally excepted by the Treaty of Paris.

5th, Is it forbidden from motives of economy, on the ground that it does not affect the issue of the war?

It has often been asserted, and will no doubt often be repeated by the opponents of the seizure of private property at sea, that it cannot possibly affect the issue of the war. It is, consequently, they say, a mere wanton interference with

private rights, and the exercise of the power of such seizure by the maritime States which possess it, is forbidden on the principle of economy. That there are powers, real or apparent, which, in this inexplicable world, do not generate rights, is but too true, and if the power of maritime capture can be shown to fall under this category, its exercise must be abandoned as anti-jural. Every exercise of force that is needless is forbidden by the law of nations, because law, in every form, as I have said so often, is an ideal economist. If the allegation be true in point of fact, then I admit that it is fatal in point of law.

But in order to meet it in point of fact, it is scarcely necessary that we should follow our opponents into the wide field of historical and statistical inquiry into which they invite us. The fact of their opposition, we may pay them the compliment to admit, is a sufficient refutation of the allegation on which it rests. The tribunal which sat at Geneva to try the claims of the United States against this country for the proceedings of the *Alabama*, will scarcely be suspected of partiality for English notions of maritime law; and if they were sincerely of opinion that these proceedings caused no prejudice to the United States, why did they award such prodigious damages against England? In suing for these damages, and for the vastly greater consequential damages which they claimed, the United States cut themselves off from this argument against maritime capture, at all events, as effectually as did the Continental jurists by whom the damages were awarded; and we who paid the damages are surely entitled for the future to assume that this branch of the controversy is disposed of.

6th, *Is it forbidden, on the ground that it is at variance with the "sentiment juridique international"?*

The desperation with which men, wise and learned and generally dispassionate, will occasionally rush from post to pillar and from pillar to post in search of arguments to support a foregone conclusion, has often been remarked; and as regards this matter, the phenomenon is one not wholly unknown even within the precincts of the Institute of International Law.

At first the arguments of the opponents to the seizure of property at sea rested almost exclusively on ethical grounds. The practice was declared to be piracy in a modern dress, and was stigmatised as an outrage on humanity, morality, and civilisation. When this plea could no longer be maintained, an excursion was made into the field of utility. It was a practice, they told us, which cost more than it was worth; and as hurtful above all to maritime States, they besought Englishmen to abandon it for their own sakes. To this, whilst expressing our sense of their consideration for our special interests, we replied that, when looked at from this point of view, the question fell beyond the scope of international law, and became a question of national politics, of which we must be permitted to judge for ourselves.

Finally, both humanity and utility were thrown overboard, and our opponents betook themselves to what it seems is called *le sentiment juridique international*. It was on this convenient ground that victory was ultimately claimed by M. Bulmerincq, in the *Annuaire* of the Institute for 1878.¹ What the *sentiment juridique* may mean, is more than I

¹ P. 75.

can tell; but as M. Bulmerincq assures us that it has nothing to do with natural law, I should say that for a jurist to appeal to it as the source of his science was pretty much the same as if a botanist were to rest the science of vegetable physiology on the *sentiment botanique*, or a chemist were to pooh-pooh an alleged relation between two substances, on the ground that chemical sentiment would have none of it. Any serious discussion of the value of such a factor in the science of jurisprudence would be an insult to the class of readers for whom these pages are intended. Those who cannot get beyond sentiment had better let science alone.

7th, Is it forbidden from motives of policy peculiar to this or any other country?

Though not falling, as I have said, within the scope of the science of international law, a very different measure of importance must be conceded to this question, which has been discussed with so much zeal and eloquence, and with such wealth of information by M. de Laveleye and other economists. It is a question mainly for merchants and shipowners, and one for the determination of which the experience of another maritime war will probably be required. The prevalent impression in this country is that, by means of protected routes and other expedients, our navy will still be able to protect our private shipping so as to cause no very serious loss of private property, whether that loss be borne, as heretofore, by private owners, or be transferred, as, in accordance with the principles which I have developed, it ought in my opinion to be, to the State. Most of our ocean steamers are now built so as to carry, if need be, several heavy guns, for fighting which the

Admiralty would, no doubt, make provision ; and so armed, there is every reason to believe that they would be able to protect themselves, even in the event of America reverting to the system of privateering which the other Powers agreed to abolish at the Treaty of Paris in 1856. It is undeniable, however, that the introduction of railway communication has greatly altered the conditions of the problem ; and as scarcely any enemy's ships would be put to sea, the value of the right of capturing them would be relatively insignificant. Any injury that could be done to our carrying trade would be covered by the merest trifle of increased insurance ; and as the maritime trade of the opposite belligerent would be annihilated, it is probable that the belligerent value of the retention of the right would greatly outweigh any loss which we should sustain from neutral competition. Merchants would still send their goods by the best ships, and by those which sailed at the times which suited their convenience best ; and these, for the most part, would be English ships. But the subject is one on which I altogether decline to express a dogmatic opinion ; and if the *sentiment juridique* can be conciliated by the abandonment of the old rule, at no serious loss to this country, far be it from me to urge its retention. My sole object has been to show that by the conversion of private property into public property, the practice of maritime capture may be adhered to in full accordance, not only with the principles of the law of nations, but with the principles of public municipal law. It was these latter principles, indeed, alone that were violated by the old rule. It was to her own citizens that England was unjust. To her enemies she merely applied

a form of pressure by which the sacrifice of their property was substituted for the sacrifice of their lives. It will be admitted, I believe, that no country in the world can compare with England in the honesty with which she conducts warfare on land, seeing that it is our armies alone which pay their way in ready money. In granting acknowledgments for the property which she captured at sea, the utmost that could be alleged against her would be that she did at sea what other nations do on land.

I shall now consider, very shortly, whether any means can be suggested by which the interests of the State may be protected against the temptations to fraud by the owners of ships, and collusion by the captors, to which the extension of the system of quittances to naval warfare might possibly give rise. The question is one on the answer to which the practical realisation of the principles we have indicated for the reconciliation of the rights of the individual with those of the State must in no small measure depend.

8th, Can the State, whilst accepting the loss of the private owner as its own, protect itself against collusion between him and the captor?

Strange as it may at first sight appear, it will be obvious, on a little consideration, that, in the event of the system of quittances being extended to the capture of private property at sea, it is the State, and not the private owner whose interests would be endangered. We must here again, consequently, make a short digression into the region of public municipal law. The captor, in his private capacity, has clearly no interest to undervalue the property which he

seizes. The more precious the prize, the larger will be his claim for prize-money. Neither he nor his State is to pay for the ship at the time; and, even in the event of its having ultimately to be paid for by his own State, no personal liability attaches to him. He pays his share of the indemnity as a citizen of the vanquished State, and that is all. Now this being so, as public enemies may very well be private friends and willing to be private benefactors, there is an obvious risk of a collusive enhancement of the value of the capture. It is against the State to which the owner of the vessel belongs, and not against him as a private person, that the armed ship is carrying on war; and in these circumstances, even where there is no dishonest intention, it is natural to expect that the captain of a man-of-war would be willing to accept the statement of the captain of the merchantman as to the value of his ship and cargo with little scrutiny, even if scrutiny were possible. Is the owner's State, then, at once to pay the bill which the captain of a hostile man-of-war has drawn upon it at the suggestion of the man who is to receive the money? These considerations indicate the necessity of some ultimate proof of the value of the goods seized before the owner shall be entitled to claim payment for them as public property surrendered by him to the belligerent uses of his own State. Such a proof at sea would be attended, it is obvious, with very serious difficulties; and in the event of the vessel being destroyed, no opportunity might be afforded of conducting it elsewhere. But the difficulty is one which must in some way be made to give way before the magnitude of the object, if I am right in regarding that object as inseparable

arable from the honest retention of a rule of warfare to which most Englishmen attach so much importance. I am fully alive to the objections which might be alleged against what seems the most obvious expedient—viz., the acceptance of the insurance as the measure of the value of the vessel. But, though I do not profess to be rich in expedients, there is another which suggests itself to my mind, to which the same objections do not apply. Why should not a register be kept, by a Government department, of the value of all mercantile adventures, with a view to the case of capture in time of war? The sum to be claimed from the Government in the event of capture, *ought*, of course, to correspond to the amount of insurance effected with private underwriters against other risks; and the Government valuation might be declared to be the measure of the extent to which private insurances could be legally affected. Such an arrangement, in the case of maritime warfare, might have the effect of removing one of the principal defects which seems almost inseparable from the use of the quittance as a guarantee against private robbery in warfare on land. And in this, as in many other respects, the regulation of maritime warfare, in accordance with the principle of the immunity of private rights, in place of being more difficult, is less difficult than in the case of warfare on land.

Another direction has been pointed out to me, in which, in the event of such an arrangement, the State would require to limit its liability—*i. e.*, that in which the merchant, in the hope of gain, violated rules laid down by the State for the guidance of those who claimed its protection or its indemnity. The old system of convoys—of sending ships of war for the

protection of fleets of merchantmen on special voyages—it is felt would scarcely satisfy the exigencies of modern trade ; and I am told that, in the event of another maritime war, this system will probably undergo considerable modifications. In place of protecting special voyages, it is believed that the Admiralty would protect special routes—an arrangement which the substitution of steamers for sailing vessels, and the improved methods of signalling by means of electric lights, have greatly facilitated. It is on those routes exclusively on which a merchant-vessel need never be far from help, that I conceive it to be the duty of the State to accept the losses incurred by private persons. If, in order to get the first of the market by outsailing his competitors, a merchant chooses an unprotected route because it is shorter, or attempts to run a military blockade, and his ship is seized, that is his affair. In the limitation of routes there would still, no doubt, be a certain interference with the freedom of trade ; but though the State, in its paternal capacity, is bound to protect the private citizen, in so far as it can, from losses which it may occasion him, there is a point at which his filial duties come fairly into play ; and in the beginning of a war, till the seas were swept of enemies' ships, there are few who would grudge such a limitation of their power of competing either with neutrals or with each other.

To be called upon, for the sake of their country, to limit their prospects of gain for a time by sending their goods by a longer route, on which they are assured either of protection or indemnification, is a very different thing from being told that they must run the risk of losing their property altogether, in

consequence of a war of which, as individuals, they possibly did not approve, or else that they must arrange with the underwriters to pay both for ship and cargo, just as if they had perished by winds and waves. There is no reason to suppose that merchants and shipowners are less patriotic than other citizens; and if the arrangements here suggested to protect them against exceptional losses were adopted, I believe that the opposition of the Chambers of Commerce to the capture of property at sea would cease. But it must not be forgotten that to active and enterprising men time is money, and that no interest which they could demand would compensate them for being deprived of their property till the termination of the war. On this ground, it appears to me that the payment to the private owner by the Admiralty ought to be made at once. The moment that the prize court of the captor's country has decided that the prize is good—i.e., that it has been taken in accordance with what, in the meantime, must be held to be the laws of war, and if restored at all, will be restored only by a mixed commission named in the treaty of peace, or by some international prize court of appeal not yet instituted—then, if not even sooner, the owner's State in whose behalf it has been sacrificed, should compensate him for his private loss. Whether or not the State may ultimately succeed in recouping itself by means of an indemnity, is a public, not a private matter.

9th, Is the capture of private property forbidden from an international point of view, on the ground that its tendency is to render a single State supreme at sea?

There is unquestionably a feeling in Continental countries

that the naval supremacy of England is inconsistent with the presence of reciprocating will, and, as a necessary consequence, with international recognition. It is regarded as the counterpart of universal empire on land, and, when conjoined with the prodigious growth of our colonies, as being possibly a step in that direction; and it is on the ground that it tends to foster this supremacy that the form of naval warfare which we have been here discussing is really, though not ostensibly, objected to. The feeling would be wholly reasonable if the mercantile supremacy of England had resulted from any other cause than fair competition in open market, or if it were maintained by employing the warlike navy against the mercantile marine of other States for other than warlike purposes, and in time of war. But England has been more consistent than most countries in respecting neutral property under the enemy's flag; and now that she has gone the length of sparing even enemies' property when covered by the neutral flag, and would not, I presume, consider herself entitled to establish a mercantile blockade, she cannot be reproached with interfering with neutral carrying trade.

Then as regards the interests of her friends and neighbours in time of peace—so far from the presence of our armed ships being detrimental to foreign trade, they afford it its best protection. If men would remember to what prodigious dimensions the curse of piracy has often attained,—if they would refresh their memories as to the condition of the Mediterranean when the Roman Senate conferred on Pompey a commission embracing almost dictatorial powers, or of the

English Channel and the German Ocean when the first Lord High Admiral, or Tolphan, as he was called, was appointed in the reign of Henry III.,¹ they would have some conception of what the peaceful merchant owes to the omnipresence of a military and mercantile marine, which, in an age that has to cope with a proletariat more formidable than the world has ever seen, has made the sea safer than the streets. It is England that maintains the police of the planet; and if Continental trade does not flourish, it is not because the humblest skipper of the smallest State in Europe may not engage in it with as much security and freedom as the richest shipowner of London or Liverpool.

It is perfectly true that a fighting navy on anything approaching to the scale of that which we at present keep afloat, is superfluous for this purpose; and nothing can be more disastrous than the race which we run with the whole world in building armoured ships. But it is not England alone that is guilty of this monstrous act of international folly. Relatively to the extent of her colonies and of her trade, the English navy is far from being in excess of the navies of Continental States. It is neither the fault nor the merit of England, *as a State*, that she has the greatest colonial empire in the world, and the greatest mercantile marine at sea. England in her public capacity does nothing for her trade, and less for her colonies than other States. Look, for example, at what France does, and has all along done, for Algeria. These things have grown up from private enterprise,

¹ *Lindsay's Merchant Shipping*, vol. i. pp. 395, 396. Martens, *Droit International*, pp. 60, 78.

which she was not entitled to repress, and they have imposed on England not only national but cosmopolitan duties of exceptional magnitude, which can be discharged only by an exceptionally powerful navy. The greatest colonial empire and the greatest mercantile marine *necessitate* the greatest military marine to protect them. The things are inseparable; and England can no more dispense with her navy than she can abandon her colonies and her trade.

But it is on the *relative* superiority of her military marine alone that the greater extent of her colonies and of her trade compels her to insist; and it appears to me that there is no direction in which relative disarmament might be carried out with so much ease and such obvious advantage as in the navies of the civilised States of Europe and America. Assuming the present relation between the navies of the different States to correspond to their necessities, let that relation be maintained, and the problems which might result from any conceivable combination for warlike purposes would be unaffected by a proportional reduction of the whole of them—say by 50 per cent in tonnage and in guns,—whereas the saving to the whole world would be incalculably great. To how many “homes of one room”¹ might a second room be added for the cost of a single ironclad, which the next step in the science of destruction will reduce to the value of old iron? We shall be told, of course, that “the subject is surrounded by difficulties;” but it will scarcely be pretended that it is “surrounded by impossibilities,” or even that it is

¹ Mr Bright’s Rectorial Address at Glasgow, 22d March 1883.

“excluded from the range of practical politics ;” and unless this can be shown, its importance, surely, entitles it to the most serious consideration of diplomatists and ministers of State. It is a subject, at all events, which I do not hesitate to commend to my colleagues of the Institute as one to which their labours might be more fruitfully devoted than to attempting, whilst they recognise the necessity and consequent jural character of war, to rob it of the most merciful weapon which it wields.

CHAPTER XVII.

OF THE PASSIVE ABNORMAL JURAL RELATIONS.

Of jural submission.

That it is necessity alone which brings the active abnormal relations within the pale of jurisprudence has always been admitted. But that the passive abnormal relations are in the same position in this respect, is by no means generally recognised. War, whether for subjective or objective freedom, can be jurally undertaken only after every other expedient has been exhausted ; but war, whether in our own behalf or in behalf of our neighbour, it is said, may always be jurally declined or abandoned. The two propositions, however, are manifestly contradictory ; for to say that no man can ever be *bound* to fight, is equivalent to saying that it can never be *necessary* that he should fight. The opinion that in abnormal

circumstances passivity or neutrality, when not imposed by necessity, re-enters the sphere of the normal relations, can be logically held only by a Quaker; and is not held even by all Quakers, it would seem, since Mr Bright, whilst condemning the Egyptian war of 1882, was careful to guard himself against the imputation of holding that there are no circumstances in which he would not admit the necessity of war.¹

Nor is this the only inconsistency that presents itself when we analyse the prevailing opinion with reference to the passive abnormal relations. It stops short at the duty of self-defence;² and thus it is our duties to others, not to ourselves, which are withdrawn from the empire of necessity. If our subjective freedom can be asserted or defended only by war, there is very little disposition to fall back on altruistic precepts of non-resistance. But if it is our neighbour's cheek that has been smitten, then we are told that neutrality is not only jurally in our option, but that we do well to embrace it. There is supposed to be a sort of debatable ground between

¹ "Now I have never said that war in all cases can be escaped. I have never said that, under the present circumstances of this world, unless you can come to the time when men, in obedience as they believe to the will of God, will submit to every sacrifice—I do not see myself, and have never said how war can be always escaped. You know that when I preach the doctrine of peace you are told I do not think war can be justified or ought ever to be carried on. I think it was Lord Palmerston in his—I would say rather ignorant manner—who said that what people of my opinion would do in the case of an invasion, would be to bargain with the invader for a round sum, if possible, to go home again. But what I say with regard to war, speaking of it practically, is this—that the case for it should be clear—not a case supported only when men are half crazy, but when they are cool; that the object of it should be sufficient, that the end sought for should be peaceable and should be just, and that there should be some compensation for and justification of the slaughter of hundreds of men."—*Speech at Birmingham: Bright Celebration, with Lord Granville in chair, June 14, 1883.*

² *Ante*, p. 42 *et seq.*

right and wrong on which we must still defend ourselves, but on which, if another should come to grief, it is no matter of ours. We may help him if we choose, but it is an "imperfect obligation;" and if we prefer to be neutral, the demands of jurisprudence will be satisfied. On this ground, it is with the doctrine of neutrality that we must now be mainly occupied; and a very few words will suffice on the subject of jural passivity in the presence of objective power.

The acceptance of a relation of subjection, which involves the relinquishment of subjective freedom for the time being, like the acceptance of other abnormal relations, may be justified by necessity, on the part even of a community which possesses within it the elements of separate political life, and which is not wholly deprived of the power of physical resistance. Of the point at which this jural necessity emerges, as of the limits of jural self-assertion and self-defence, the community must, in the absence of any central authority, be itself the judge. But probably there are no circumstances in which the interposition of external judgment is more called for than when such a State as Poland, or such provinces as Alsace and Lorraine, have to determine whether their nationality is jurally annihilated or transferred, or whether it is still worth fighting for, as that of Greece and Roumania and Servia have proved to be. It is only where a conflict has run its full course, and ended in the entire exhaustion of one of the combatants, as was in a great measure the case with the Southern States of America, that the acceptance of subordination can be regarded, in the first instance, as more than involuntary and transitory. But assimilation and amalgamation

produce permanent jural relations. Sometimes, moreover, the submission, even though brought about by conquest, is not wholly involuntary. The German States which united themselves to Prussia in order to form the German Empire, can scarcely be said to have acted at variance even with their proximate will; though in some of them, as in Hanover and Saxony, there was, and probably continues to be, much conflict of sympathies. But where this conflict does not rest on diversity of race, if it is not perpetuated by interference with local institutions, it rarely extends beyond the second generation. The Poles, it is said, are becoming reconciled to Russian rule; and in fifty years Alsace and Lorraine will be more German than they ever were French.

CHAPTER XVIII.

OF NEUTRALITY IN GENERAL.

Neutrality is an abnormal relation, existing between one or more recognising States at peace and two or more recognised States at war, which becomes a jural relation only when intervention becomes impossible.

We have seen (Chap. II.) that, as active take precedence of passive duties in all the abnormal relations in which rational entities stand to each other ethically, so intervention takes precedence of neutrality jurally—i.e., by the law of nations. Neutrality is thus not only an abnormal relation in itself, on

may be cases in which that object may be, or may seem to be, attainable by neutrality or by intervention, indifferently; and in such cases an option between these two courses will, no doubt, be jurally open to the State which is unable to decide between them. But such cases must always be rare; and the acknowledged interdependence¹ of States in our own time tends to render them rarer and rarer. It is the growing sense of their rarity, indeed, that is the progressive element in international morality upon which our hopes for the progress of international law depend.

Of the strength of this element, the European concert, even as it now exists, and our proposals for the adoption of international arbitration on a wider scale and a more organised system than any hitherto known to diplomacy, are prominent manifestations. International organisation, developed to the extent of enabling tribunals to enforce their own decrees, is the aspiration of a still more advanced school of internationalists. Is it not manifest that these are all but varied forms of intervention, and that in every direction it is to intervention that the very individuals who talk most of neutrality and non-intervention really direct their hopes? "Charity begins at home," and the real interests of his own country must always be the first consideration of the statesman; but to identify a policy of neutrality with the interests of international peace is one of the strangest hallucinations that ever took possession of clear-headed men.

¹ I am gratified to find that my learned colleague, M: de Martens, throughout and consistently repudiates independence as the basis of international law. He is the first writer, I believe, who has done so; but it is the doctrine which I have taught for more than twenty years.

But, rare as we must hope that the cases are in which mutual aid is excluded, it cannot, I think, be denied by the most sanguine internationalist that there are cases in which jural intervention by pacific means is impossible; and it will be readily conceded that there are other cases in which war-like intervention on the part of States, in their corporate capacity, would simply add fuel to the flames. There are thus circumstances in which neutrality is the only jural attitude which States can assume to each other. Let us consider, then, under what conditions neutrality forces itself on our consideration as a jural though abnormal relation.

CHAPTER XIX.

OF THE KINDS OF NECESSITY WHICH JUSTIFY NON-PARTICIPATION IN BELLIGERENCY; OR, IN OTHER WORDS, WHICH COMMUNICATE A JURAL CHARACTER TO NEUTRALITY.

1st, Involuntary ignorance, or intellectual and consequent moral inability to participate in belligerency.

Without a definite knowledge of the merits of the quarrel which has given rise to a war, it is morally, and if so it is jurally, impossible to take part in it. Doubts and divided opinions cannot justify so terrible a resolve; and so long as they are present, neighbouring States will best perform their duty, and consult their interests, by a policy of absolute impartiality. Partial intervention will not be justified by partial knowledge;

and the only question as to the character which the neutrality of States so situated shall take, will depend on the question how they can be most entirely impartial. Where absolute non-participation is possible—as we shall see reason to believe is generally the case with States in their corporate capacity—non-participation, absolute non-intervention, will be the rule. Where, on the other hand, absolute non-participation is impossible—as for the most part is the case with States when viewed as aggregates of private persons—impartiality must be sought not in feigned non-participation, but in permitting private sympathy to express itself *equally* in favour of each combatant.

2d, Impotence or physical inability to participate in war.

A State which has no hesitation as to the side of the quarrel which it would embrace, may, from the limited character of its own resources, from its inability to secure allies, from its geographical position or other causes, be totally incapable of affecting the war one way or the other, or may be capable of affecting it only at a greater probable loss to itself than of gain to the belligerent whom it knows to be in the right.

The only risk in assuming a neutral attitude in such cases is that, from motives of apparent self-interest, we should be guilty of cowardly and ignoble shrinking from international duty. So long as there is no international organisation which overrides the judgment of the individual State, each State must be the judge in its own case—the judge and the party must continue to be identical; and,

“ When self the wavering balance holds,
 ’Tis rarely right adjusted.”

But however imperfect may continue to be the practice of

States, in neither of the two preceding propositions will they find, I believe, the theoretical justification for international apathy which is not far to seek in the conceptions of neutrality that have gradually foisted themselves into the law of nations since the passing of the municipal statutes to which I shall presently refer.

CHAPTER XX.

NEUTRALITY, WHETHER NECESSITATED BY IGNORANCE OR BY IMPOTENCE, IS NEVER A RELATION OF INDIFFERENCE.

The neutral's temporary abandonment of the duties of active friendship being involuntary, he continues to regard himself and to be regarded by the belligerents after a proclamation of neutrality, as their mutual friend. Passively he sympathises with both in their effort to adjust their difference, and to remove the causes that have led to the abnormal relation in which they stand to each other. An attitude of indifference between rational entities, whether individual or corporate, bound together as they are by the links of reciprocal rights and duties, if it can be called a relation at all, is an anti-jural relation; and I neither share nor envy the opinion of those who would voluntarily purchase peace at such a price. Far from regarding the belligerents with indifference, it is the duty of the neutral to watch their conflict with the keenest interest, and to be ready,

at the first moment that it becomes possible, to intervene in behalf of the interests of humanity, which are the ultimate interests of both combatants. Such is the doctrine not only of the law of nature, but of the common law of nations; and it is in virtue of it that diplomatic relations between belligerent and neutral States are unbroken, and that, where not restrained by municipal legislation or international convention, the citizens of neutral States are entitled to trade with the citizens of belligerent States, and even with the belligerent States themselves in their corporate capacity.

CHAPTER XXI.

NEUTRALITY IS A RELATION BETWEEN STATES AND THEIR RESPECTIVE CITIZENS, AND NOT BETWEEN THE INDIVIDUAL MEMBERS OF DIFFERENT STATES AS PRIVATE PERSONS.

1st, Of the neutrality of the State as a body politic.

States are the subjects of international law, just as citizens are the subjects of municipal or national law. States, not citizens, are consequently the objects of recognition; and as belligerency and neutrality, as relations known to the law of nations, spring from and depend on recognition, it is States only that can be either belligerents or neutrals.¹ Neutrality, like belligerency is, exclusively, a public relation.

¹ *Ante*, p. 81.

States in the eye of international law thus absorb the citizens which constitute them. International law knows nothing of the individual members of States *in their citizen capacity*. Personal or private rights, as we have seen already,¹ and as I shall again take occasion to explain, are *juris gentium*, and are internationally recognised; but citizen or public rights—the rights which are defined and measured by the public laws of separate States—are *juris gentis*, and are wholly and exclusively municipal.

And as of rights so of duties. The citizen, as such, has no international obligations or responsibilities. His obligations are to his own State, and are the counterpart of the rights which he has to its protection. But against other States, it is through his State alone that he can assert his rights; and it is his State that is responsible for his actions. If his throat is cut as a prisoner of war taken in the service of the State, it is his State that is internationally outraged; if he cuts the throat of a prisoner that he has taken, it is his State that has committed a breach of the law of nations. Internationally the jural existence of the citizen is thus wholly sunk in the jural existence of the State; or, in other words, the State is a jural unity of the component elements of which the law of nations takes no account. Its individual or personal subjects are not recognised as citizens of a State, but as citizens of the world; and it is from a cosmopolitan point of view alone that the law of nations exercises jurisdiction over them, whether civil or criminal. When the law of nations prescribes rules of civil jurisdiction, it deals with persons whose

¹ *Ante*, vol. i. p. 348 *et seq.*

rights it regards as existing independently of the States to which they belong, though, in virtue of the doctrine of recognition, it accepts the definitions of these rights with which the municipal laws of their respective States supply it.¹ In like manner, when the law of nations exercises criminal jurisdiction directly, it deals with persons whom it claims as its own citizens. When it punishes pirates, it does not punish the citizens of the States to which the pirates belonged, but cosmopolitan criminals, whom it regards as having ceased to be State citizens altogether in consequence of their having broken the laws of humanity as a whole, and become enemies of the human race. Citizen criminals, on the other hand, it simply hands over to the States whose laws they have broken.

Having thus distinguished the State and its citizens from the private persons who, as citizens of the world, enjoy the rights which the law of nations confers, and are subject to the liabilities which it imposes, let us inquire, in the first place, how the former class—the State and its citizens—can best discharge the duties imposed by, and enjoy the privileges and immunities resulting from, an attitude of neutrality.

¹ *Ante*, vol. i. *ut sup.*

CHAPTER XXII.

SUBSEQUENT TO A PROCLAMATION OF NEUTRALITY,¹ THE NEUTRAL STATE, AND ITS CITIZENS AS CITIZENS, MUST ABSTAIN ABSOLUTELY FROM TAKING PART WITH EITHER BELLIGERENT.

If neutrality means, as we have been led to conclude,² impartiality, the question with reference to the neutrality of the State and its citizens, viewed as a single body politic, is, how can this body best secure its own impartiality? Now this, I believe, will best be effected by absolute non-participation in belligerency, both on the part of the State and of the citizen. Neither State nor citizen must interfere at all.

But this has not been by any means the universal opinion. Impartiality, it is alleged,³ may be effected in two ways, either by helping neither of the belligerents, or by helping both equally. But though the position of impartial participation may not be a violation of neutrality, and though some publicists of eminence recognise it to the extent of permitting the levying of troops equally by both belligerents, I believe it to be shut out from neutral States in their corporate capacity by the principle of economy, which is of universal validity in jurisprudence, and by which all needless expenditure of force is forbidden. Here it is obvious that this principle acts in the

¹ Appendix, No. VII.

² *Ante*, p. 127.

³ Vattel, III. cap. vii. vol. ii. p. 191. Bluntschli, *Revue de Droit International*, 1871, p. 125.

municipal rather than in the international direction. Impartial participation, if such were possible, might be indifferent to the belligerents, but it can never be indifferent to the State at peace; for, by fighting on both sides, the State fights against itself, and, without adding to the relative power of either belligerent, it wastes its own resources. Even by the simple fact of dividing its forces, it breaks up its own corporate character, and strikes at its own existence as a State. Suppose, for example, that, in the very divided condition of public opinion in this country in the winter of 1878-79, two expeditionary forces had been sent out, one to help the Turks, and another to help the Russians; or that we had sent two ambassadors of opposite sympathies to the Congress of Berlin. Is it not obvious that the international influence of England, greatly weakened as it had been by party strife, would have been annihilated?

The corporate action of the State I believe to be jurally possible only by open intervention. The nearest approach which neutrality makes to intervention is when it takes the form of what I have called double-intervention—*i.e.*, when, in the hope of arresting a combat, it comes between the combatants and strikes up their swords. As a successful instance of this proceeding, I have frequently mentioned the intervention by France and England between Belgium and Holland in 1830.

And if it must not fight, neither must the State nor its citizens, as such, give or lend the means of fighting to either belligerent. It is conceivable, of course, that giving or lending should be done equally to both sides, just as it is conceivable that fighting may be done equally. But if so done, it is forbidden by the same principle of economy;

and here it is scarcely necessary that we should make even the partial exception which we did in the former case. We cannot strike up the swords of the combatants by putting swords into their hands, money into their pockets, or food into their bellies.

On the same principle, it is obvious that *neither the State nor its citizens as citizens, must buy or sell to either belligerent.*

Trading differs from lending, giving, or even fighting, in this, that it is essentially a non-neutral relation. It is conceivable, of course, that the State in its corporate capacity, or the citizen as its servant, should be willing to sell to both belligerents equally, and that no preference should be given except to the highest bidder. But it is the belligerent who is in want of the commodity who will always be the highest bidder, and as the commodity presumably is of greater value to him than the price which he pays for it, he is favoured by getting it to buy.

Much as my opinion is at variance both with dogma and usage, I can make no distinction, in this relation or in any other, between munitions of war and ordinary commodities.¹ All objects are munitions of war if a belligerent is in want of them; and no objects are munitions of war unless, or until, he is in want of them. Salt-beef and saltpetre are precisely on the same footing in this respect; and steel bayonets may be a superfluity where steel pens are a desideratum.

So far as the State itself is concerned, then, and those who

¹ I shall have occasion to revert to the subject of contraband of war when I come to speak of trade by neutral persons.

belong to it, when regarded simply as its citizens, there is no difficulty. It must neither interfere nor permit interference by its officers, civil or military, either in its name or in their own. Every man who bears its commission, or eats its salt, is simply part of it. So long as he remains in its service he has no separate international existence. His citizenship absorbs his personality; and the same is the case with the non-official citizen so long as his public rights and obligations alone are taken into account. If he exercises the suffrage in favour of a fiscal or other financial measure, the effect of which would be to favour either belligerent, he is guilty, *qua* citizen, of a non-neutral act, which the belligerent who is injured may avenge on his State, and, through his State, on him.

CHAPTER XXIII.

A DECLARATION OF NEUTRALITY, BEING A PUBLIC TRANSACTION BETWEEN RECOGNISED AND RECOGNISING STATES, DOES NOT PRECLUDE THE SUBJECTS OF NEUTRAL STATES, AS PRIVATE PERSONS, FROM TAKING PART WITH EITHER BELLIGERENT, OR RENDER THE NEUTRAL STATES OF WHICH THEY ARE CITIZENS JURALLY RESPONSIBLE FOR THEIR ACTIONS.

Both in the theory and in the practice of neutrality it is always with the position of the private neutral, viewed not

as a citizen but as a person, that difficulties occur; and as practice follows theory, and not theory practice, it is with the theory that we must begin. Now, in accordance with the doctrine of recognition, and the public character of jural belligerency which results from it, the private citizen, or rather the citizen regarded as a private person, differs from the official citizen, or the citizen regarded as a citizen, in this respect, that his personality and his citizenship coexist; and that whilst *qua* citizen he follows the State just as its official members follow it, *qua* person his character is cosmopolitan, and he has a separate *international* status which leaves the question of belligerency or neutrality open to his personal decision. The citizen of a free State is not *adscriptus glebæ* in the eyes either of municipal or international law. His allegiance to his own State does not deprive him either of the rights, or relieve him from the duties, of a citizen of the world. The very object of his citizenship, on the contrary, is to ensure the independence of his personality. Whilst neutral as a citizen he may thus be belligerent as a person, and whilst belligerent as a citizen he may be neutral as a person; and both for the simple reason that, whereas his citizen rights and duties are municipal, or *juris gentis*, his personal rights are international, or *juris gentium*. So far, I think, the theory is irrefragable, unless we are to overturn the whole doctrine of recognition, and relinquish not only the public character of war, but the basis on which private international law rests, and in virtue of which it becomes a branch of the law of nations. It is only on the ground of its validity *juris gentium* that the simplest

contract, when defined by the laws of one State, will be enforced by the laws of another.¹

What, then, is the bearing of this theory on the doctrine of neutrality, first as regards persons, and then as regards things?

1st, May the citizen of a neutral State enlist in the service of a belligerent State?

The response which our theory yields is simple enough. The citizen *qua* citizen of the neutral State may not, but the person *qua* citizen of the world may. But how is the same individual to act in two separate capacities? Can he stay at home as a citizen, whilst he goes to war as a person? My answer consists in observing that, whilst his personality is indelible his citizenship is not. The right on his part of putting it off falls under the category of those personal rights which are inalienable, whilst the right of depriving him of it springs not less obviously from the very existence of the State. Whilst his personality, with its corresponding rights and duties, exists independently of human volition, separate or aggregate, subjective or objective, his citizenship, with his citizen rights and duties, may cease by an act either of his own will or of the will of the State to which he belongs. For the time being, it is true, he may subordinate his personality to his citizenship, and this he does in every case in which he accepts the service of the State. So long as his service to one State continues, it shuts him out from serving any other State, just as any contract of service shuts him out from any second contract. He cannot serve two

¹ *Ante*, vol. i. p. 348 *et seq.*

masters, *at the same time*; but inasmuch as he is a servant and not a slave, he may pass from the service of one master to the service of another, when the conditions of his contract with the first have been fulfilled. And, as we have said, the conditions of free citizenship do not and cannot exclude the right of renouncing it.

Now such, I think, is not only the true theory of the international position of the person, but it is the theory which more or less consistently the common law of nations recognises. Hobart Pasha was compelled to resign his commission in the English navy when he took the command of the navy of the Sultan. Had the theory of neutrality been accurately carried out, Hobart Pasha ought not only to have resigned his commission as an English officer before he became a Turkish officer (which he did not do till after), but he ought to have renounced or to have been deprived of his nationality, or citizenship as an Englishman, the moment after he became a Turkish officer. Citizenship and public service are inseparable, and Hobart Pasha, as an English officer, was not entitled to accept Turkish service. The distinction between his position as an English officer and as an English citizen, I hold to be this. Had he been a private English citizen he would have been entitled, in virtue of his personality, to enlist in the Turkish service, though by doing so his English citizenship would *eo ipso* have been abandoned. As an officer he was bound to resign his commission before his freedom of choice as a private citizen revived. He was under no obligation to continue to be an Englishman, but he had no more right to be an English citizen and a Turk at the same time,

than he had to be a Christian and a Mahometan. Whilst yet an Englishman, in the enjoyment of his free citizenship, he was entitled to elect whether he would continue to be an Englishman or become a Turk. His last exercise of his rights, as a freeborn Briton, consisted in the act by which he ceased to be one. When he had become a Turk, there was of course no impediment, either municipal or international, to his becoming a Turkish admiral.

Very much the same jural consequences, I imagine, would have resulted, had Captain Hobart, R.N., accepted the command of a Turkish trading vessel, or entered into an engagement as a man before the mast; because he would, thereby, have passed out of the jurisdiction of the neutral State of which he was a citizen into that of one of the belligerents. As England could no longer have controlled his actions, she ought no longer to have been responsible for them. The flag which determines the nationality of the ship and cargo ought to determine the nationality of all who sail under it, otherwise than as passengers. If nationality and domicile be kept apart,—and on other grounds I have attempted to show that they cannot be identified,¹—no difficulty need attend either the renunciation or resumption of nationality. It does not seem, therefore, that there would be any hardship in its renunciation being made imperative on citizens of neutral States who participated in war, on neutral sailors who entered the mercantile marine, or even on all persons who voluntarily resided in belligerent countries during the continuance of hostilities.

¹ *Ante*, vol. i. pp. 429-438.

As regards military enlistment, at all events, probably the best arrangement for relieving the neutral State from responsibility, would be for it—in place of vainly striving to prevent enlistment—to establish enlistment offices under its own supervision, and to declare those who enrolled their names as recruits to be *eo ipso* citizens of the State into whose service they enlisted. Similar provision might be made for those who, in any civil capacity, chose to throw in their lot with a belligerent State.

CHAPTER XXIV.

OF BELLIGERENT NATIONALISATION.

That nationalisation, for purely belligerent purposes, should leave domicile unaffected, follows as a logical consequence from the public character which we have seen to belong to the modern conception of war. War being between States and their respective citizens in their citizen capacity, it is a change of citizenship, or nationality only, that is requisite to entitle the neutral citizen to enrol himself in the belligerent ranks; and his right to effect this change of citizenship, which, as we have just said, belongs to him as a free man, has now received municipal recognition in our own Nationalisation Act of 1870.

It will be objected to any proposal for facilitating the separation of citizenship from domicile, that such a separation

would lead to international complications, because you might thus have a man whose status was determined and whose private relations, both personal and patrimonial, were governed by the laws of one State—fighting not only for another State, but against another State with which his own original State was at peace. The objection at first sight appears formidable; and it is necessary that my answer to it should be as definite as I can make it. My answer, then, is this. By renouncing his public or citizen relation to his own State, he renounces every hold on it which could enable him to influence its relation to either belligerent. By renouncing the suffrage and the right of being returned to Parliament, or to any other political body, he renounces his claim to participate in its legislative action. He can no longer influence its tariff so as to favour the belligerent whom he serves, and he cannot employ his private means in its service otherwise than he would have been free to do had he continued to be a citizen of his original State. In like manner, he renounces all part and lot in the executive action of his former State, because no one but a citizen can be a public servant. It is thus in his private or cosmopolitan capacity alone that he continues to be bound to it by the retention of his domicile; and it is not as a private or cosmopolitan person, but as a citizen and a public official, that he has joined the State under whose banner he has enlisted. That State does not ask him whether he is a major or a minor, whether he is married or single, whether he is a debtor or a creditor, or even a criminal; and if his former State is appealed to by the belligerent against whom he fights, it answers simply: "He is not a citizen; we

have nothing to do with him in his public capacity, and you have nothing to do with him in his private capacity. Shoot him, or take him prisoner as fast as you can; and so long as you act to him in accordance with the laws of war, we shall ask no questions. But, in the event of his death, we shall regulate his succession; and in the event of his captivity, we shall see to the honest administration of his private affairs, in accordance with the law of his domicile."

CHAPTER XXV.

THE NEUTRAL CITIZEN, IN VIRTUE OF HIS PERSONALITY, MAY
TRADE WITH EITHER BELLIGERENT WITHOUT RENOUNCING
HIS CITIZENSHIP.

We have seen that the prohibition against fighting, which applies to the neutral State and its citizens, extends to lending and trading, whilst enlistment by the citizen involves the renunciation of citizenship. We have further seen that the latter principle applies to the neutral who casts in his lot with a belligerent in any civil capacity. He, too, must renounce his nationality. How, then, does it stand with the citizen in his private capacity as to trade? May the private citizen, *whilst still a citizen*, buy and sell and lend to belligerent States and belligerent citizens on his own account—that is to say, at his own risk, and with a view exclusively to his personal in-

terests or feelings? That the international status which permits him to enlist will permit him to trade as a person, without rendering his State responsible for a breach of neutrality, follows clearly enough, I think, from the fact that the doctrine of recognition, whilst repudiating public, covers private rights. But in order that the neutral State may cease to be responsible for the citizen whilst thus exercising his personal rights, must it, in the case of his trading, as in the case of his enlistment, insist on his forfeiting his rights as a citizen? In order to enjoy the rights of a citizen of the world, must he, in the latter case as in the former, abandon his rights as a citizen of the State? And in the event of his doing so, is he to go over to the belligerent with whom he trades, or is he to remain outside of State rights altogether, and content himself with being simply a citizen of the world? It is obvious that both of these alternatives are shut out from him by the conditions of the question; for if he became a belligerent citizen he could not possibly trade as a neutral person, and if he denationalised himself altogether, there is no unoccupied territory which he could make the basis of his trading operations. Either, then, he must not trade at all, or else he must trade whilst still the citizen of a neutral State.

Now the reason why the neutral does not lose his rights of citizenship by trading, either according to the theory or according to the practice of the law of nations, is that he does not thereby repudiate the duties of citizenship. Trading, it is true, is a non-neutral act, because, as we have seen, it cannot be performed impartially.¹ But the non-neutrality of the trader does

¹ *Ante*, p. 134.

not, like enlistment, hinder the neutrality of the citizen; for, as a citizen, the trader accepts the neutrality which his State has declared. He continues within neutral jurisdiction, subject to neutral laws; and as the State can enforce his neutrality as a citizen, it can suffer no injustice in being responsible for its observance. Moreover, he contributes to its resources, though he knows that these resources will not be applied to aid the cause which, as a person, he may possibly favour, or the belligerent with whom he finds it for his interest to trade. Under such conditions, in electing whether he shall trade or abstain from trading, the citizen of a free State is within the rights which municipal law reserves to him, and which international law recognises. In virtue of these personal rights, his personal property, after he has met his citizen obligations, belongs to him and not to his State. He is entitled to do what he will with his own; and he may thus not only lend it, or trade with it, but he may give it away to either belligerent without procuring the consent of his State, or involving it in responsibility. "Les droits d'ordre privé," as M. Mancini remarked, as we have already pointed out, "appartiennent aux hommes comme hommes, et non pas comme membres d'une société politique."¹

The legitimacy, not only of war in general under certain conditions, but of the war in question in the actual circumstances, having been recognised by a proclamation of neutrality, sympathy with either side ceases to be a crime, with which the municipal laws of neutral States can deal. The

¹ *Rapport à l'Institut de Droit International*, Session 1875, p. 22: *Revue de Droit International*, 1875, p. 350.

State has no more right to constrain its subject, *in his private capacity*, to be neutral, than the subject in his private has a right to constrain the State, *in its public capacity*, to be belligerent. I believe it to be only by adhering rigorously to the distinction between the person and the citizen that any limits can be set to the responsibility of neutral States. The moment it is departed from, and actions which do not violate private order are forbidden on public grounds, freedom of speech is endangered as well as freedom of trade ; and it is at the option of belligerents to hold neutrals responsible, not only for their merchants and shipbuilders, but for their platform orators and newspaper editors, just as much as for their foreign ministers, their ambassadors, or their secretaries of legation. The rule here, then, must be to leave both belligerents to regulate their relations with the citizens of neutral States by the ordinary motives of sympathy and self-interest ; or, in other words, by the laws of supply and demand. By throwing its markets and its press absolutely open, or rather by leaving them open, the neutral State acts to the belligerents with the same impartiality as if it absolutely closed the one and gagged the other ; and whilst the former proceeding is easy, the experience of every war has proved the latter to be impossible, even to the modified extent to which it is prescribed by existing usage.

Is there, then, here an absolute conflict between the rights and interests of belligerents and the rights and interests of private neutrals ? By legalising trade and enlistment, are we feeding war, or the contrary ?

CHAPTER XXVI.

THE FINAL OBJECT OF BOTH BELLIGERENTS BEING PERMANENT PEACE, THIS OBJECT WILL BE PROMOTED BY FREEDOM OF ENLISTMENT BY PRIVATE NEUTRALS ON THE RENUNCIATION OF THEIR NEUTRAL CITIZENSHIP, AND BY FREEDOM OF TRADE BETWEEN NEUTRAL CITIZENS, IN THEIR PRIVATE CAPACITY, AND BELLIGERENT STATES OR CITIZENS.

We have seen that inasmuch as neither enlistment nor trade can as a rule be impartial, both must be regarded as essentially non-neutral acts. In their primary aspect they favour the belligerent who is best able to take advantage of them. But this is their primary aspect merely. When we look more closely into the matter, we find that there is an object common to both belligerents, as well as to the neutral world, the attainment of which, so far from being impeded by these non-neutral acts, is facilitated by them. This common object, the object of all war, as has been so often said and so often forgotten, is peace, and this not a mere temporary cessation of hostilities, but a permanent peace, which can result only from a removal of the causes of the war. The question at issue must not be avoided; it must be answered. Now, in so far as our existing laws of neutrality, which find expression in the Foreign Enlistment Acts of 1819 and 1870,¹ and in the Washington Rules of 1871,² aim at the enforcement of

¹ See Appendix, Nos. X. and XI.

² *Infra*, p. 157.

private neutrality, whether in the direction of enlistment or of trade, I hold them to be condemned by the fact that their object is not to answer the question which the war has raised, but to evade or suppress it. They are thus unjust both to belligerents and to neutrals. They are unjust to belligerents because they rob them, or seek to rob them, if not of their money, of their money's worth in the aid which that money, or it may be sympathy, would otherwise have procured for them. On the ground of the ultimate identity of belligerent and neutral interests in the stability of the peace to be attained, they are unjust to neutrals also. As regards both belligerents and neutrals, they are impediments to freedom in the first instance, whilst they yield no compensation to either by its ultimate vindication. They are thus at variance with the ultimate object of jurisprudence as a whole;¹ and the more efficacious their provisions, the more absolutely must we condemn them. Like other bad laws, it is their inefficiency alone that renders them tolerable.

Let me illustrate what I mean by two examples which will long dwell in the recollection of international jurists. Had the sale of ships to the Southern States of America during the civil war, or the sale of arms to France during the Franco-German war, together with the enlistment—which, in the case of the American war, was carried on on a very great scale—been really prevented, there can, I daresay, be little question that both wars, as between the original parties, would have been sooner ended. But there can, I imagine, be just as little question that the risks of a renewal

¹ *Institutes of Law*, p. 355 *et seq.*

of these wars would have been increased. In the case of the Franco-German war, more especially, had peace been concluded after the battle of Sedan, who can doubt that the large portion of France which up to that time had seen nothing of the war, would have immediately become clamorous for an opportunity of reversing its unacceptable verdict? It was to the arms which private traders in England and America supplied to France that Germany owed the completeness of her victory. The "benevolent neutrality" which Germany claimed from England could never have done for her what our simple adherence to the law of nations did. By preventing the sale of arms, as the Germans wished us to do, we might possibly have arrested the war; but by doing so, as the event proved, it would have been France that we should have benefited, not Germany. That America violated the law of nations by selling arms to France from the public arsenals, is admitted by all the best American jurists. But England was guilty of no breach of neutrality in permitting her private citizens to sell indifferently to either belligerent whatever he was in want of, and had money to pay for; and yet, with a strange inconsequence in so learned and clear-sighted a nation, it was not America but England that Germany, even after the war, continued to accuse of non-neutral conduct. That Germany should have asked England in her corporate capacity to violate her neutrality was surprising enough at the time; but that Germans should have continued to talk afterwards as if they still owed us a grudge because we did not do it, when the result of the war is taken into account, is quite inexplicable.

But how far does this free-trade principle carry us?

Ought free trade to exist between belligerents, inter se?

The great principle of free trade, which more and more asserts itself in the peaceful relations of States, suffers no exception in the relation between neutrals and belligerents; and free trade in material objects is but one form in which freedom of individual action asserts itself. It is only by the fullest recognition of this principle, indeed, that real neutrality becomes possible, or that a final verdict of battle can be hoped for.¹ It is an interesting question whether, by following out this principle still further, the trial of strength would not be fairer, and the consequent exhaustion of the causes of war more complete, if trade were permitted even between belligerents—or rather if the belligerents themselves were to permit it. It is a question which, belonging to the laws of war rather than of neutrality, is scarcely *hujus loci*. If we may glance at it for a moment, however, I think I can show by a very simple illustration that if it does not demand an affirmative answer, it has at any rate two sides that very fairly balance each other.

Paradoxical as it may seem, it might, without difficulty, be argued that Germany would have been a gainer by selling to France, at their market value, the whole of the arms taken at

¹ Competitive examinations are a species of battles, and in a corresponding manner it is their failure to exhaust the ultimate resources of the candidates that gives to them the misleading character so often complained of. Extraneous aid is necessarily excluded on the occasion from all the candidates alike, and the same time is allowed them; but all the candidates are not equally affected by these limitations. When the trial is over, the forgetful men refresh their memories, and the slow and nervous men recover their wits, and the candidates who were foremost in the short race at the table, are nowhere in the long race of the outer world.

Sedan, at Metz, and elsewhere in the earlier part of the campaign, in so far as she did not require them for her own purposes, in place of retaining them to adorn her final triumph.¹ Even to have repeated the process as often as she was able to recapture the arms, and France was willing and able to repurchase them, would have been in accordance with the principles of political economy, and I think of warlike economy also. Germany herself, in that case, would have reaped the profits which went into the pockets of Englishmen and Americans, and which even the American Government, as we have seen, did not disdain. If these profits were greater than those which Germany derived from the use of the arms during the war, Germany injured herself, *as a belligerent*, to the extent of the difference, by not selling to the French their own arms back again, or any other arms that she had and did not require. She simply retained so much old iron in Berlin which she might have converted into money wherewith to clothe and feed her soldiers in the field ; and she missed the best customer she was ever likely to get for it.

Free trade does not exclude belligerent capture.

Absolute freedom of trade between neutrals and belligerents, and even between belligerent and belligerent, it will be obvious, is altogether distinct from the prohibition of the seizure of the property of one belligerent by another, whether at sea or on land. Such prohibition, on grounds which I have already explained, I believe to be irreconcilable with the principles, as

¹ The guns and mitrailleuses taken in the war were ranged along both sides of the Linden when the troops entered Berlin in triumph on the memorable 18th of June 1871.

it certainly is at variance with the practice of war. The belligerent right which warrants the destruction of life, warrants, as we have seen, *à fortiori*, the destruction of property, or better still, its retention or resale. As regards neutrals, so long as war is recognised as inevitable—and without such recognition there can be no neutrality by the law of nations—they can have no right to limit its action, except in so far as the rights of the belligerents are subsumed under the higher rights of humanity. In recognising war as jural belligerency, they recognise the jural character of its action up to the point at which that action becomes self-contradictory and wasteful, and as such conflicts with human interests, those of the belligerents included.

And as to practice. It would, I believe, be easier to prevent war altogether than to limit it, as the advocates of the prohibition of the seizure of property would do, to the shedding of blood. The peace party would be honestly with us in the former case; whereas in the latter, we could have them only by deceiving them, as they are deceived at present by their professed sympathisers who cry out against the seizure of private property at sea. So far from joining in a cry which has always appeared to me to be dictated by considerations of immediate self-interest, I have often wished that war could be carried on by the seizure of property exclusively, and that money could thus be substituted for blood.¹ In the present

¹ Wine *versus* Blood.—A distinguished jurist and statesman, who has done me the honour to read these pages in proof, proposes the following case as a crucial test of my position: “Supposons la France en guerre avec l’Angleterre. Les vendanges sont faites. Les entrepôts de Bordeaux sont remplis de tous les produits de la dernière récolte. Certainement si, à ce moment, une escadre Anglaise

relation, at all events, it is important to remark, that the seizure of property, whether at sea or on land, is simply an application of the principle of free trade to the conduct of hostilities, in which fighting takes the place of bargaining and seizure of purchase. Where war is inevitable and purchase impossible, seizure, so far from being in contradiction with, is defensible on the very same grounds on which compulsory

pénétrait dans la Gironde, et si vos blue-jackets envahissaient les caves et les entrepôts des négociants bordelais, transportaient toutes les barriques à bord de vos vaisseaux, en y ajoutant quelques étoffes, des meubles de prix, etc., bref tout un petit assortiment capturé chez de riches particuliers, il n'y aurait qu'une opinion possible sur cet acte; ce serait une violation du droit des gens. Cependant quelle serait la différence caractéristique, essentielle, entre ce fait et celui qui consisterait à poster votre escadre à quelques lieues des côtes, près de l'embouchure de la Gironde, et là, à capturer des vaisseaux français qui arriveraient chargés de ces mêmes marchandises en destination de pays amis de l'Angleterre ?

"S'il n'y a pas de différence intrinsèque, la prise maritime, même exercée par des vaisseaux de l'Etat, n'est pas justifiée."

Now, at the risk of incurring the consequences of foolhardiness, I feel that if I am to escape the second horn of the dilemma which is here presented to me, I must accept the first. The identity of the principles which govern war at sea and war on land is unquestionable, and if I am to defend the seizure of property in the one case, I must defend it in the other. Farther, I must admit that in accordance with existing conceptions of jural warfare, the case first supposed would be a violation of the law of nations. But I question the soundness of these conceptions, on the ground that they are at variance with the dominant principle on which they profess to be founded. That principle, which governs the choice of all warlike means alike, I believe to be that they shall be those means by which the objects of war can be attained at the smallest cost; and if this be so, I have difficulty in imagining a cheaper means of putting the screw of war on France than by seizing a whole vintage of Bordeaux wine whilst still in the cellars of the wine-growers and merchants of Bordeaux. A raid on the private cellars of these gentlemen would be a different matter; and if by "un petit assortiment capturé chez les riches particuliers" my correspondent intends to put domestic property on the same footing with property in warehouses and factories, I must explain that in practice, if not in principle, there is, to my mind, a very clear distinction between them. I do not know, in the event of an occupation of the town of Bordeaux, that the so-called necessities of war would not be held to justify the seizure of these latter objects; but this is an occurrence

purchase may be defended in other circumstances. For the realisation of private justice alongside of the public robbery, which, like public homicide, is inseparable from war, we must look, as I have said, to the full and careful acknowledgment to be given by the belligerent for the private property seized, and the payment of adequate compensation in the manner already described.¹

against which every possible precaution ought to be adopted, and it is one which is not contemplated in the transaction I am here defending. If our "blue-jackets" were landed in overwhelming force,—force that is to say, corresponding to that which they could have used at sea,—there is not the least reason why they should not empty every mercantile wine-cellar and every manufactory in Bordeaux without the shedding of a drop of blood or the use of a single discourteous word. Domestic tranquillity would be as undisturbed and female honour as safe during the operation as if the town had been in the hands of the French police; and as regarded the rights of private property in the wines and other objects of commerce, the transaction would consist simply of a compulsory sale of the whole of them at once, not to England but to France. A prodigious indemnity would be levied, by anticipation, as it were, on the French nation, and a blow would be struck at the belligerent resources of France, the magnitude of which may be measured by the horror which the bare mention of it will inspire. And imagine the fast and furious fun there would be in England when the wine was landed! The "war-vintage" would sell for a ransom that would pay the whole expenses of the expedition. Nor need the merriment which its arrival would occasion, be alloyed by the feeling that injustice had been done to private persons. It would be the fault of France herself if her merchants were defrauded, and in return for the blood of her grapes, the blood of her children, to a corresponding extent, would be spared to her. The hands which, had a battle been fought in the fullest accordance with the law of nations, would have been rotting under the soil, would be left to prune the vines for future vintages. "Spears would be turned into pruning-hooks" without sacrificing the objects of war.

The same argument would, of course, justify the seizure of the Bank of England by a French fleet, provided it could be effected with as little disturbance to the tranquillity of London. Even if the seizure were effected as the result of a battle, the case would not be altered. The victor is just as much entitled to levy an indemnity at each stage of the war as at its termination, and that such a practice would have the effect of shortening wars seems to me very obvious.

¹ As to the use of *quittances* &c., pp. 89-109, see *ante*.

CHAPTER XXVII.

OF THE HUMANITARIAN OBJECTIONS TO FREE ENLISTMENT AND
FREE TRADE BY PRIVATE NEUTRALS.

I am aware that the numerous class of well-intentioned persons who are opposed to war in every form, and are anxious to grasp at what appears to them to be the readiest means of checking it or of limiting its area, will not be satisfied with the considerations which I have submitted to them in the preceding chapters. By permitting the citizens of neutral States to engage in war on the mere condition of their renouncing their nationality, and by abolishing the distinction between munitions of war and other articles of trade, it will be said that we should be feeding war, and that whilst the evils of war are immediate and certain, the good which we promise from it, when thus set free, in the form of a more stable and permanent peace, is distant and contingent. To this I think it is a sufficient answer that practically both enlistment and trade in munitions of war have gone on, notwithstanding our Foreign Enlistment Acts, just as they did in former times, and that their only effect has been to make neutral States responsible for transactions which they cannot prevent.¹

¹ "There is a curious analogy between the Foreign Enlistment Acts and the law prohibiting marriage with the sister of a deceased wife. Both have been inoperative from the same cause—viz., that the *mala prohibita* with which they dealt were not recognised by the general conscience as *mala in se*. Both lacked the ethical basis on which alone positive law can withstand the assaults of in-

Now every unenforcible responsibility which you lay on a neutral State is a war-snare which you set for it. It *may* buy itself out of it, as we did at Geneva; but it is a strange peace-policy which seeks to entrap a State into an abnormal relation to another State in order thereby to demonstrate the efficacy of arbitration. The apostles of arbitration seem sometimes to forget that arbitration is only a new form of combat which may degenerate into the old form at any turn; and that the true peace-policy consists in avoiding conflicts altogether by adhering to principle, which is God's peace-policy, in preference to expediency, which is man's peace-policy. If the doctrine that, where fighting has been recognised as a necessity by a proclamation of neutrality, the duty of neutral States is to abstain from limiting either belligerent in the free use of his resources, be the true jural doctrine, we need not doubt that on the whole, and in the end, it will prove to be the pacific doctrine also. It is quite easy to imagine circumstances in which the simple permission to enlist neutral citizens in their private capacity, and to purchase munitions of war, might be the means of deciding a campaign in a single battle, or even of arresting it without a battle at all. Suppose the combatants to be nearly equal in numbers, but the one to be greatly richer than the other either in material wealth, in military organisation, or in the sympathies of contemporary mankind, some such result would necessarily follow. And even if the conflict continued, the presence of combatants—generally in the immediate self-interest. Neither of them was adequately enforced by public opinion."

capacity of officers—from neutral States would, for the most part, be a guarantee for the observance of the laws of war, similar to that which we have remarked as resulting from the presence of neutral correspondents of the press. There probably was no other officer of the United States to whom a Southern officer would have given up his sword with so much confidence as to one of the French Princes.

CHAPTER XXVIII.

THE FOREIGN ENLISTMENT ACTS AND THE "THREE RULES OF WASHINGTON," BEING AT VARIANCE WITH THE PRINCIPLE OF FREE TRADE, LOGICALLY INVOLVE THE TOTAL PROHIBITION OF TRADE BETWEEN PRIVATE NEUTRALS AND BELLIGERENTS.

If the principles which I have just enunciated be sound, if not only the interests of private neutrals but of the belligerents demand that the combatants shall be free to bring their whole resources into play, it becomes important to remark that this conclusion involves an almost total condemnation of our own Foreign Enlistment Acts, and those of America, and more especially of the famous "Three Rules," with reference to the sale of ships, laid down in the Treaty of Washington, of May 8, 1871, by which an international character was communicated to these municipal enactments. Let us look, then, at these celebrated rules.

"A neutral government is bound—

"First, To use *due diligence* to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has *reasonable ground to believe is intended* to cruise or to carry on war against a Power with which it is at peace; and also to use *like diligence* to prevent the departure from its jurisdiction of any vessel *intended* to cruise or to carry on war as above,—such vessel having been *specially* adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, Not to permit or suffer either belligerent to make use of its ports or waters as the *base of naval operations* against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, To exercise *due diligence* in its own ports and waters; and *as to all persons within its jurisdiction*, to prevent any violation of the foregoing obligations and duties."

These rules, it is true, like the Foreign Enlistment Acts of which they are a development,¹ do not wholly forbid trade

¹ Their identity with the recognised principles of international law was expressly denied by the British Government:—

"Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that her Majesty's Government cannot assent to the foregoing rules as a statement of principles of international law which were in force at the time when the claims mentioned in art. 1 arose; but that her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provision for the future, agrees that, in deciding the questions between the two countries arising out of these claims, the arbitrators should assume that her Majesty's Government had undertaken to act upon the principles set forth in these rules.

"And the high contracting parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime Powers, and to invite them to accede to them."—*Treaty of Washington*, art. 6.

"England having declined to accept the interpretation of the three rules by the

between private neutrals and belligerents. But the object of this whole class of enactments, municipal and international, is to limit the freedom of neutral intercourse. If logically carried out, they would prohibit trade altogether, and render neutral States responsible for their citizens in their private just as in their public capacity. That such was their practical tendency received an emphatic demonstration in the very first war which occurred subsequent to that with too exclusive reference to which the Treaty of Washington was negotiated. The American civil war was scarcely ended when the war between Germany and France broke out, and Germany immediately demanded that the prohibition of the sale of armed ships should be understood as a prohibition of the sale of arms in general, even when carried on as a purely mercantile speculation. On the principle of the rules, the demand could not be logically refused, and it is not surprising that its refusal caused much irritation in Germany.

The only attempt at a defence of the Rules of Washington, in accordance with the principles of free trade, that I have met with, rested on a distinction drawn by Mr Westlake¹ between the use of neutral territory for the building of ships and for the manufacture of arms; but it was a distinction scarcely likely, I think, to commend itself to the

arbitrators at Geneva, this agreement was not acted upon; and, in the words of an American jurist, 'We have two Governments differing in their interpretation of the rules, yet bound to observe them, to procure, if possible, the adhesion to them of other Powers. As far as future difficulties are concerned,' he adds, 'we must admit that any other board of arbitrators would not be compelled to follow the interpretation of the tribunal at Geneva. The present case only is governed by the arbitrators' interpretation.'"—*Woolsey's International Law*, p. 500.

¹ *Revue de Droit International*, 1874, No. I., p. 59 *et seq.*

mind of an aggrieved belligerent, heated by the passions of war. In order to make the distinction between the sale of armed ships and the sale of arms good for anything, it ought to have been shown that the ships were built in building-yards either possessed by or under the direct control of the neutral Government, whereas the arms were manufactured in workshops wholly belonging to and managed by private persons. But the building-yards and the workshops were entirely on a footing of equality in this respect; and all that Germany asked, substantially, was that we should go one step further, in order to oblige her, in the direction in which, in order to oblige America, we had been voluntarily and even boastfully marching—the direction, viz., of the entire prohibition of trade between private neutrals and belligerents. If that be a goal at which we would not willingly arrive, to say that having failed to stop at the sale of armed ships, we are now to stop at the sale of arms and other munitions of war, is to rely on a distinction which defies all definition, and which never can permanently endure the fiery ordeal of actual war. Munitions of war, I repeat,¹ are what war demands, whether it be shot and shell, or shoes and stockings.

Lord Chief-Justice Cockburn for once had his brother arbitrators at Geneva with him when he declared that he could find no distinction between ships and arms. How, then, could he or they have distinguished between salt and saltpetre? If one belligerent is in want of salt and the other of saltpetre, we are equally violating neutrality whichever we

¹ *Ante*, p. 133.

exclude. And conversely, if we admit the one we must admit the other. If we favoured North America by excluding ships, why should we not favour Germany by excluding arms? We are forbidding to the belligerent who is deprived of his commodity the use of his money; and as money is proverbially the sinews of war, we are favouring his adversary by thus tying his hands. There is no favour to either party, and consequently no breach of neutrality in permitting both belligerents to purchase, for the market price, whatever they can pay for, provided we do nothing to affect that price by increasing or diminishing our duties pending the war. But even on the inadmissible assumption that the principle of these rules and of the Foreign Enlistment Acts on the lines of which they travel, should be carried out to the extent of prohibiting belligerent and neutral trade altogether, their neutral—meaning thereby their impartial character—would not be saved, because:

The total exclusion of trade between neutrals and belligerents by municipal legislation would be a non-neutral act.

It is inconceivable that two belligerents should, at the same moment, be equally in want of neutral commodities and equally in a condition to purchase them. By forbidding their purchase by both belligerents, we consequently favour the belligerent who either does not want them or who cannot pay for them; and in so far as the effect of our municipal legislation extends, we fight on his side. Neutrality gone mad thus runs over into belligerency, and becomes suicidal. To a limited extent similar non-neutral results must, of course, occasionally flow from the rule of the common law of nations, which ex-

cludes trade between neutral and belligerent States in their corporate capacity. But the evil in this case is more than counterbalanced by the line which can thus, and thus only I believe, be drawn between neutrality and intervention. Neutrality, as we have seen, is justified only on the assumption that intervention is jurally impossible; and the entire prohibition of State trade constitutes the nearest approach which the State can make to absolute non-intervention. The Rules of Washington were essentially Northern rules.

Up to this point, then, the conclusions at which we arrive may be thus summarised :—

a. The rules of neutrality embodied in the Foreign Enlistment Acts, and in the Rules of Washington, are sound in principle, in so far as they seek to isolate belligerent from neutral States in their corporate capacity; or, viewing the matter from the neutral point of view, to enable neutral States to isolate themselves by maintaining an attitude of absolute non-interference.

b. They are unsound in so far as they seek to deprive belligerent States of such aid from the interposition of private neutrals as their resources are in a condition to procure, and as they seek to limit the freedom of neutral citizens in consulting their interests and exhibiting their sympathies.

c. These conclusions apply equally to private enlistment and to private trade, without any distinction between what are and what are not commonly regarded as munitions of war.

d. The distinction which they seek to obliterate between the responsibility of the neutral State for its own actions and those of its citizens in their citizen capacity on the one hand,

and for the actions of its citizens viewed as private persons on the other, results from the public character of war, and is in accordance with the common law of nations.

e. The new rules, in so far as they ignore this distinction, are not a development of the principles of the law of nations, or an attempt to define its provisions more sharply. They are not a step on the road which the law of nations had travelled with tolerable consistency up to the passing of the first American Foreign Enlistment Act in 1794, but they are a step aside; and the question for our present consideration comes to be, Was this step justified by the permanent interests of State neutrality? Did it compensate for the additional responsibilities which it laid upon neutral States, and for the interference with private rights which resulted from it by the guarantees against international entanglement which it afforded? It is not on theoretical but on practical grounds, which are assumed to conflict with theory, that these rules are generally defended. It is maintained that practically States can keep out of war only by departing from the principle of the common law of nations, and identifying themselves with their citizens in their personal as well as in their citizen capacity; and that for this reason they must undertake the responsibility of preventing the individuals of whom they consist from doing what they themselves undertake not to do.

Let us contrast these rules, then, with the common law of nations in this aspect.

CHAPTER XXIX.

OF THE RELATIVE FACILITY OF ENFORCING THE OLD RULES
AND THE NEW.

The first remark which I shall make with reference to the old rules of the common law of nations is, that they are at once intelligible and enforceable. If we except the right of search, — which is mainly necessitated by the distinction which we have repudiated between munitions of war and other commodities,—they neither imposed on neutrals impossible duties nor involved them in impossible responsibilities. The neutral State could really answer for itself; and in undertaking to abstain from all interference after it had proclaimed its neutrality, it undertook no engagement which could not reasonably and fairly be enforced against it. It said nothing of its own motives or intentions, or those of its citizens. It promised only for its own actions. It would not fight, it would not trade, it would not lend. There was no pretence of doing any of these things impartially, for mere purposes of trade, or the like. They were not to be done at all.

Then, as regarded its citizens, — who, in their private capacity it foresaw might escape its grasp, whose motives it could not penetrate, and whose personal freedom it was not entitled to control,—it came under no obligations at all. If they fought, or traded, or lent, they did so on their

own responsibility, and at their own risk, in virtue of the international status which belonged to them as persons. Each belligerent State was entitled to deal with them as if they and their possessions had belonged from the first to the opposite belligerent. If they enlisted, they became, *de facto*, belligerents; and if they sold or lent, their property became, *de facto*, belligerent property, and they and their goods were liable to belligerent seizure, not only after their arrival at the seat of war, but *in transitu*.

When the law of nations declared these things to be so, law and fact were in harmony, which is the only condition on which law can ever be permanently administered.

But if the rules of the common law were so sound in principle and so workable in practice as I have here represented them, why, I shall be asked, were they so unsatisfactory as to lead to their abandonment in favour of rules resting on opposite principles, and the practical effects of which must be the very reverse? The answer appears to me to lie on the very surface of the history of the occurrences which led to the introduction of these new rules. The rules of the law of nations were always gall and wormwood to one belligerent; nay, more, inasmuch as the more powerful and self-helping belligerent usually suffered most from them, or appeared to himself to suffer most from them, it was to him that they were specially bitter. To his eyes they presented themselves in no other light than as a means of enabling his antagonist to prolong war by neutral assistance. He accordingly it was who called for their abolition. He was ready to declare, or at all events to threaten, war against every neutral

who acted on them ; and neutrals in such circumstances are apt to prefer peace to honour. In a quarrel in which they are not directly concerned, their *immediate* interests are so plainly on the side of peace as to blind them to the risk of its ephemeral character, and to reconcile them to a sacrifice of the interests of their private citizens which will always be partial, and which they hope will be transitory. The error in determining the permanent jural value of neutral rules has been caused by consenting to look at them through belligerent eyes. No rules can ever satisfy two belligerents at the same time, for the simple reason that they are belligerents. What is meat to one belligerent, or intending belligerent, is, *eo ipso*, poison to the other ; and no rules that are impartial, or are impartially administered, can be, or at least can be felt to be, quite fair to both of them at the same time. Even the entire prohibition of trade,—the realisation of the ultimate ideal of the new rules,—would not, as we have seen, affect belligerents equally, because one will be always more in want both of men and of commodities, and one will always have more means than the other of procuring them. There has always consequently been, as I think there always must be, one discontented belligerent. The law of nations had an answer ready for him with which he ought to have been satisfied, and had he not been a belligerent, would have been satisfied. The law of nations told him that, when his turn came, the advantages which his rival at present enjoyed would be his ; and that, even at present, his rival's advantages were rather apparent than real, inasmuch as they enabled him to settle the quarrel between them more effectually and more

permanently. If victory was really and permanently to be his, the law of nations only gave it to him more completely by enabling him more completely to exhaust the resources of his antagonist. It might prolong the war, or even turn the tide of battle for the time, but only with this final result, — the strongest arm and the longest purse must ultimately win.

But this answer did not satisfy the belligerent who was independent of neutral aid, because the immediate advantages of a rule which would cripple the resources of his opponent was obvious, whereas its ultimate advantage was hidden by an obscurity which his inflamed and heated belligerent eyes could not penetrate. Even if he were to look beyond the immediate aspects of the present contest, it was possible, from the local character of his country, that his immediate success might be again impeded by rules which on this occasion had enabled his antagonist to avail himself more fully of his resources in neutral markets and neutral building-yards. At any rate he was irritable, as all belligerents are, and belligerent irritability naturally took the form of a claim for the abolition of any arrangements which stood in the way of immediate victory. This claim he enforced by threats, to which, if he was powerful, a neutral who was weak, or cowardly, or selfish and short-sighted enough to consult his special and immediate as opposed to his general and ultimate interests, was not unlikely to listen. A single frightened or selfish neutral, of course, could not change the common law of nations; but as there was no central authority to maintain that law, the frightened neutral could appease the enraged

belligerent by a municipal enactment at variance with its principles, and undertake, by treaty, responsibilities with which the law of nations did not burden him, and which he could not perform.

Such, substantially, is the history of the changes that had been brought about in the conceptions of neutrality which many persons came to entertain between the passing of the first American Foreign Enlistment Act of 1794, and the last English Foreign Enlistment Act in 1870; and such, too, is the history of the rules embodied in the Treaty of Washington, by which England and America have bound themselves in the meantime to the principles of these Acts.¹ Their negotiation was the result of belligerent irritability, not of calm and dispassionate neutral deliberation; and it is this circumstance which, even in time of peace, causes the greatest difficulties that stand in the way of their readjustment. The neutral of to-day may be the belligerent of to-morrow. He tries to see who is likely to be his next antagonist, and to adjust the law with a view to proximate contingencies. But to exhaust such contingencies is impossible; and even for the neutral who is most likely to suffer for it, in the first instance, the best and fairest rule is that which shall leave him and his antagonist, whoever he may be, to spend their money for their money's worth in open market. No rule but this can ever be impartial. No other rule can ever rise to the character of a permanent law; and it is with permanent laws, and not with belligerent interests and susceptibilities, whether German or

¹ *North America*, No. I., 1874, p. 21.

French, whether English or American, that scientific jurists are alone concerned, and that practical jurists ought alone to concern themselves.

CHAPTER XXX.

PRACTICAL OBJECTIONS TO OUR EXISTING ENACTMENTS VIEWED AS MEANS TO THE END WHICH THEY PROFESS TO SEEK.

So long ago as 1865—seven years before the arbitration at Geneva in the Alabama case,—in addressing the Chamber of Commerce of Leith, I ventured thus to criticise the then existing Foreign Enlistment Act of 1819: “Its radical defect consists in the fact that the tests of non-neutral conduct which it aims at establishing are not workable tests. Such words and phrases as *purpose, intent, in order that*, and the like, occur in almost every clause of it;—‘for the purpose, and with the intent of enlisting, or entering to serve or be employed;’ . . . ‘shall *knowingly aid*, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with *intent* or *in order that* such ship or vessel shall be employed in the service of any foreign prince;’ . . . ‘or *with intent* to cruise or commit hostilities,’—and so forth, *ad infinitum*. Now, no statute which contains such phrases as these will ever be a workable statute; and so long as we have no better tests of neutrality and non-neutrality than the *intention* with which individuals perform acts, in themselves legal, there will

be constant uncertainty on the part of merchants and ship-builders, constant miscarriages on the part of the executive, and a *constant risk of misunderstandings between belligerents and neutrals.*"¹

The occurrences of subsequent years have not had the effect of changing the opinion which I expressed in these words. But they seem to have had just as little effect in commending that opinion to other minds than those of the merchants and shipmasters who even then applauded it; and I very much fear when we next drift into a neutral position we shall find ourselves just where we were in 1865. There is not, I believe, one of these equivocal phrases which has not since exhibited the *casus belli* I then showed to lurk within it. And yet there is not one of them which was not reproduced in the Foreign Enlistment Act of 1870, and imported into the Treaty of Washington, with the disastrous addition of the phrase "*due diligence*," which occasioned so much trouble at Geneva, and has left behind it so much dissatisfaction in England. It is only in very exceptional cases that you can prove the intention of an individual, or the object of a commodity, till the one has ripened into action or the other into application; and he must be a sanguine man who can hope for the coming of a time when "*due diligence*" shall have the same meaning to the ears of neutrals and belligerents.

¹ *Rights and Duties of Belligerents and Neutrals*, pp. 19, 20.

CHAPTER XXXI.

OF THE MEANS BY WHICH THE OBJECT OF RESTRICTING
NEUTRAL TRADE MAY BE EFFECTED.

If we are inflexibly bent on adhering to our present line of action, and if a substitute must be found for these rules by which their object of restricting neutral trade shall really be attained, the first thing that must be done, as it appears to me, is to substitute deeds for intentions. We must fix upon the acts we are to forbid and forbid them absolutely, without the least reference to the intentions, or supposed or pretended intentions, with which they are performed. Then, in like manner, what we promise we must promise to do, and not merely promise to *try* to do. No man can tell whether or not we have tried ; and that question is sure to leave dissatisfaction behind it, whichever way it is decided. But it is quite easy to ascertain whether or not we have succeeded ; and if we do not succeed in doing what we have deliberately and solemnly pledged ourselves to do by international treaty, or even what by municipal legislation we have held out to other States the hope that we would do, it is quite right that we should pay damages for our failure.

Now, if this view of the matter be correct, I do not, as regards the first of the Three Rules,¹ see that we can stop

¹ *Ante*, p. 157.

short of the absolute prohibition of trade in ships between neutrals and belligerents. I believe it to be quite impossible to draw a workable distinction between a ship of war and a ship that may be used for war. If we would prevent the sale of the one, we must forbid the sale of the other. Then it is equally in vain, I fear, to say that ships of war may be built in our dockyards for sale to belligerents, but that they must not sail from our ports, because ships are built for sailing, and they must sail from the ports at which they are built.

The device of sailing them with a neutral crew, and taking in their fighting crew and armament beyond neutral waters, was rightly dismissed by the arbitrators at Geneva as a mere subterfuge. On the whole, it humbly appears to me that there are but two rules which admit of being carried out with any approach to certainty.

(a) To forbid trade in ships between neutrals and belligerents, which involves, of course, the *principle* of forbidding trade in everything else.

Or (b) to recognise the neutral character of ships of war, built or offered for sale by private neutrals, so long as they remain within neutral waters, and as no acts of hostility are committed by their crews.

On their quitting neutral waters, they would, of course, be liable to the right of search to determine nationality, and this would expose them to seizure by the opposite belligerent, even if the right of search for munitions of war were abolished. The first of these alternatives, however, besides being a further step in what I believe to be the wrong direction of prohibiting

trade, is one which, though far clearer and more definite, is probably not much more enforceable than the first rule of Washington. It is one thing to prohibit trade, and another thing to prevent trade. A ship is, no doubt, a large object, far more difficult of secret transference than a gun. But as the building of ships in neutral dockyards for neutral markets must be permitted to go on as usual, it would be exceedingly difficult to prevent some of them from finding their way into the possession of belligerents, probably willing to pay twice the price for them that any neutral customer would offer. "Where there is a will there is a way," and it is surprising how money not only shapes the will but sharpens the wits. Depend upon it, that rule is the best which makes no extraordinary call either on the self-denial or on the sincerity of ordinary men; and that rule, in this matter, is the rule of free trade in ships, and if in ships in arms, and if in arms in everything! We cannot stand still where we are, because our present rules satisfy nobody. We must either go back to the common law and develop the principles which it bequeathed to us, or we must go on in the course into which we have drifted, which is at variance with the spirit of our time, and every step in which threatens to land us in new complications. If we have not been able to watch our dockyards, how are we to watch our foundries, our workshops, our banks? How are lands that are parted by no "silver streak" to watch their frontiers? or those that are, to watch their coasts and their future tunnels? Probably as France has been wont to watch her Spanish frontier, or as Russia watched her Servian frontier

in 1878! Mr Beach Lawrence tells us that America already shrinks from the prospect of surveillance¹ of thousands of miles of sea-coast in future wars, which the Treaty of Washington imposes on her. Is it not, then, a sickening thought that England should have made herself responsible for every blunder which may be made by an official, perhaps a mere barbarian, in permitting the sale of a ton of coals in an empire on which the sun never sets, and that at some future time the chief occupation of her ships of war may consist in chasing her own merchantmen over the seas? The celebrated American jurist to whom I have just referred, has farther said, that "if the rights of neutrals have been made to yield to exorbitant belligerent pretensions, there cannot be a more patriotic act on the part of an American than to arrest, as far as his abilities extend, by the assertion of the received doctrines of international law, the operations of hasty decisions."

Let us, from our side, bring science to the aid of patriotism, and the progress of which we have talked so much and so vainly in this matter may become a reality.

¹ *Belligerent and Sovereign Rights*, by W. Beach Lawrence, p. 53.

CHAPTER XXXII.

OF THE LAWS OF NEUTRALITY WHICH LOGICALLY RESULT FROM THE ASSUMPTION THAT, WHILST ALL INTERFERENCE BY THE NEUTRAL STATE AND ITS CITIZENS IS FORBIDDEN, FREEDOM OF INTERCOURSE, BOTH AS REGARDS ENLISTMENT AND TRADE BETWEEN PRIVATE NEUTRALS AND BELLIGERENTS, IS PERMITTED.

1st, Obligations of the neutral State in its corporate capacity.

a. The neutral State in its corporate capacity shall not fight on the side of either belligerent, either on land or at sea.

b. It shall not permit the belligerents to fight, to arm or to drill troops, or to man or equip ships of war, or for war, within its jurisdiction.

c. It shall not permit any person in any branch of its service, whether military or civil, to fight, to enlist in the ranks, or to aid either belligerent.

d. It shall not give, lend, or sell any object which may aid either belligerent in the prosecution of the war, or permit its servants or officers to do so, either in their public capacity or as private persons; and as every object which the belligerent desires must, more or less, possess this quality:

e. It shall not trade, or permit its officers or servants to trade, with either belligerent, even in articles which do not

possess the character of munitions of war, or give or lend him such articles.

f. It shall not break any blockade which is effectively maintained by either belligerent.

g. It shall not increase or diminish its import or export duties to either belligerent during the war, even with a view to its own profit.

h. It shall not lend money to either belligerent, whether gratuitously or for interest, either directly through its officers or indirectly through private persons.

i. Fugitives from either belligerent shall be permitted to enter its territory and to quit it at will, but not to engage in the war, directly or indirectly, whilst resident within it; and such arms or other munitions of war, including public money, as they bring along with them, shall be given up by the neutral to the opposite belligerent.

2d, Limitations to the responsibility of the neutral State when viewed as an aggregate of private citizens.

a. Trade, in every species of commodity, between neutral and belligerent citizens in their private capacity, shall be absolutely free, without distinction between such commodities as may or may not possess the character of munitions of war.

b. Neutral citizens in their private capacity may trade with belligerent States in their corporate capacity, both in munitions of war and in other commodities, and this whether directly through their public officers or indirectly through private agents.

c. Neutral citizens may give or lend money or any other commodities, whether possessing the character of munitions

of war or not, to belligerent citizens, or to belligerent States.

d. The neutral State shall not be bound to inquire into the motives which may lead to transactions between its citizens in their private capacity, and belligerent citizens or States; and it shall be no breach of neutrality though these transactions should not be entered into for purposes of gain.

e. The neutral flag shall cover both neutral and belligerent property, without distinction between what may or may not possess the character of munitions of war.

f. The right of search shall be limited to the ascertainment of the neutrality of the vessel, and the fact that the cargo is the property of private persons.

g. The registration of the vessel in the neutral country, in the name of a neutral citizen in his private capacity, shall be guaranteed by the neutral State; and if any question as to its genuineness shall arise, such question shall be decided by arbitration.

h. In so far as its genuine character is not disputed, such registration shall be accepted as conclusive of all questions as to ownership. The onus of proving that the cargo, or any portion of it, belongs to a neutral government, and that it is destined for a belligerent port, shall rest with the belligerent who makes the allegation, and the question shall be decided by arbitration.

i. Belligerent ships shall be entitled to enter the ports of neutral States and to trade with neutral citizens in their private capacity, in commodities of every kind, without refer-

ence to the uses for which they are destined, or to whether or not they be given for value received.

j. Neutral citizens in their private capacity shall be entitled, at their own risk, to convey commodities, including arms and munitions of war, to belligerent citizens or belligerent States, whether by land or by sea, and whether into open ports or ports that are blockaded; but no protection in so doing shall be extended to them by neutral States beyond neutral waters.

k. Neutral citizens in their private capacity shall be entitled to construct ships of war, to prepare them for the reception of their equipment, and to sell, lend, or give them to belligerent citizens or belligerent States, whether within the neutral territory or elsewhere.

l. The neutral flag shall cover ships constructed for warlike purposes even beyond neutral waters, so long as they are neither armed nor equipped, and continue to be registered as the property of private neutrals.

m. The neutral flag shall cover all commodities, munitions of war included, on board of such ships, even beyond neutral waters, so long as the commodities are stowed as ordinary merchandise, and the crew are unarmed.

n. The responsibility of the neutral State for the conduct of the crews of such ships shall cease when they quit neutral waters.

o. The neutral registration shall cease to guarantee the property of a ship which equips herself, or procures an equipment, after she has quitted neutral waters; and she shall be liable to be seized under the neutral flag, her whole cargo confiscated, and her crew detained as prisoners of war.

3d, Enlistment.

a. There shall be no distinction between volunteering and enlisting; and neutral citizens, not in the service of the neutral State, shall be entitled to enlist in the service of either belligerent, either within the neutral State or elsewhere; but their neutral citizenship shall cease from the moment that the fact of such enlistment is proved to the satisfaction of the neutral State.

b. Neutral citizens so enlisting shall be regarded from the moment of enlistment as citizens of the belligerent State whose service they have joined. They shall not be liable to seizure in a private vessel carrying the neutral flag and possessing a neutral registration, so long as they commit no act of hostility; but their conveyance by a public ship, or any ship belonging to, or in the service of, the neutral State beyond neutral waters, shall be regarded as a breach of neutrality.

c. A belligerent, formerly a citizen of a neutral State, shall be entitled to no special protection from such State either diplomatically or otherwise, so long as he holds the commission of a belligerent; but on renouncing such commission, whether at the termination of the war or previously, it shall not be regarded as a breach of neutrality that his former citizenship is restored to him.

d. It shall not be regarded as a breach of neutrality that the belligerent is permitted by the neutral State of which he was formerly a citizen to retain his domicile, and to continue to enjoy the private rights resulting from it.

I submit these rules to the consideration of international

jurists, chiefly for the purpose of illustrating the distinction for which I contend between the position of the neutral State in its corporate capacity, and when viewed as an aggregate of private persons. I am far from imagining that, even when adjusted to existing circumstances by persons possessing greater practical knowledge than I at all pretend to, they would ever entirely satisfy any two belligerents at the same time. That, as I have said, is what no neutral laws can hope to accomplish. But over our existing neutral laws they would have, I think, these two great advantages: they would admit of being really observed by neutral Powers, and consequently of being justly enforced by belligerent Powers; and, when so observed or enforced, they would, without interfering with the private rights of private neutral citizens, be impartial in reality, whether they were felt by belligerents to be so or not. It is on this latter ground that I urge their claim to scientific discussion, and that I venture to hope they may, in principle, commend themselves to peace-loving Powers.¹

¹ Persons who may be called upon to administer or to amend the laws of war or of neutrality presently recognised by their respective States, will find, in the Appendix, a collection of authoritative documents which I hope may be of use to them.

BOOK V.

**THE ULTIMATE PROBLEM OF INTERNATIONAL
JURISPRUDENCE**

PREFATORY NOTE.

THIS book, in its leading features, is the reproduction of an article entitled, "*Le Problème final du Droit International*," which appeared in the *Revue de Droit International* in 1877,¹ when that periodical was still under the distinguished editorship of its founder, M. Rolin Jaequemyns. Though I then took some pains to guard against misconception with reference to the object which I had in view, it speedily appeared that I had not succeeded; for the article was no sooner published than its author was represented as a credulous visionary, who, under a new form, had dreamt once more the old philanthropic dream of perpetual peace. Threadbare pleasantries, which had done duty in every practical treatise on international law for a hundred years, were consequently again paraded as sufficient to dispose of a discussion which neither the writers who used them, nor the public to whom they were addressed, had taken the trouble to understand. In order if possible to effect a saving in the expenditure of these inappropriate *facetiae* on the present occasion, and to enable serious critics who may be unacquainted with my general opinions, to form some preliminary conception of the character of the mat-

¹ Vol. ix., No. II., p. 161.

ter which I am about to submit to their consideration, it may be desirable that I should make the following confession of faith.

I am, then, neither an atheist nor a pessimist. I believe in the reasonableness of omnipotence and in the omnipotence of reason; and, from an absolute point of view, I venture to set no limits either to the scheme of Providence or to the perfectibility of human society. I do not say that perpetual peace will always be impossible even in this world; but, recognising as I do the presence of that mysterious element of contradiction on the action of which I have dwelt in the previous portion of this volume, I say, without hesitation, that perpetual peace is impossible at present, and that, in my opinion, it will be impossible during any period of time, or under any conditions, of which jurisprudence can take cognisance. I consequently dismiss it altogether and at once from the objects of the positive law of nations. No form of national organisation has ever reached the point of eliminating the elements of disorder from national life, and it is vain to hope that international law should yield higher results within the sphere of international life. The preponderance of order over anarchy is all that has been attained in the one case, and all that I hope for in the other. Beyond this, human will, as yet, appears to be as impotent as when brought into conflict with the destructive forces of physical nature.

Nor does my belief in the wisdom and disinterestedness of mankind carry me the length of believing that international order can be realised or maintained on easier terms than national order. All the factors which were efficacious for the

latter purpose must be called into play if the former purpose is to be attained. We cannot afford to dispense with the compulsitors, or even with the terrors, of the law. When questions have to be disposed of, of a kind which have hitherto proved to be beyond the reach of diplomatic action, I regard the spontaneous action of public opinion as insufficient to support clauses of arbitration, even should it be the means of introducing them into treaties. In this direction I am less sanguine, I believe, than many of my colleagues of the Institute, though I am relieved to find that my reluctant hesitation¹ is shared by so high-spirited and hopeful a jurist as M. Rolin Jaequemyns.² In his latest utterance he thus limits the rôle of arbitration: "*Remarquez que je dis: accommoder des différends et non pas les différends, tous les différends entre nations. Je ne voudrais pas, en effet, exagérer l'importance du thème que j'ai choisi, ni avoir l'air de vouloir vous entraîner dans le domaine de l'utopie.*" Now, as matters stand, diplomacy disposes of the minor differences between nations. It is only the major differences which lead to serious complications, or which result in war; and the question still remains, whether these are to be abandoned, and we are to accept as final the condition of international anarchy in which we at present live, or whether differences which confessedly set arbitration, as well as diplomacy at defiance, can be dealt with by international factors corresponding to the municipal factors of legislation, jurisdiction, and execution by which anarchy has

¹ *Infra*, p. 208.

² Discours prononcé à la Séance publique de la classe des lettres de l'Académie Royale de Belgique, le 9 Mai 1883, p. 1.

been vanquished in civilised States. It is this question, and this question alone, which I propose to discuss. I set out with the assumption that neither international morality nor international common-sense is to rise higher than national morality and national common-sense, and I contend that it is unnecessary for my argument that they should; but I reject the hypothesis that when rational men cross the frontiers of the separate States of which they are citizens, they must of necessity leave their wits behind them, and *in all their more important relations* with each other, revert to the condition of savages or sink to that of fools, which is the only hypothesis that can justify the prevailing despondency with reference to the future of international law. It is paying no very extravagant compliment to human nature to trust it in circumstances in which the coincidence between duty and self-interest is so apparent.

CHAPTER I.

THE ULTIMATE PROBLEM.

The ultimate problem of international jurisprudence is: How to find international equivalents for the factors known to national law as legislation, jurisdiction, and execution?

Universal experience entitles us to assume that, within the State, the realisation of positive law is dependent on the harmonious action of three factors: legislation, jurisdiction,

and execution. In every race, at every period of history, under every form of government, and alike in simple and composite States, a legislative authority by which positive law is defined, a judicial authority by which it is applied, and an executive authority by which it is enforced, have been found to be inseparable from the existence of the body politic.

The first question, then, which I propose to examine is, whether the existence of analogous factors be indispensable for the realisation of positive law without the State? Is the body cosmopolitan equally dependent for its organic existence and development on their harmonious action?

Should this question be answered in the affirmative, the second question to present itself will be: Is the development of such a system within the domain of the international relations humanly possible?

Should this second question, also, receive an affirmative answer, the third question which arises is: By what arrangements may these factors be brought into action within the sphere of the international relations? In answer to this, as to all practical questions, the scientific jurist must be contented to offer suggestions, the value of which must largely depend on ephemeral conditions which he cannot foresee.

These three questions, then, constitute the ultimate problem.

If I am reminded, as I shall be, of the utter failure which has attended all previous attempts to discover an institutional basis for international law, and if I am asked, as well I may be, how I venture to renew the discussion of a problem which has proved insoluble to so many gifted men, I reply, with the

greatest international jurist of the day,¹ that the problem is inevitable. It is a problem which, as we have seen in our previous discussions, stops the way of the international jurist in every direction; and the very same individuals who would deter him from reverting to it are ever ready, with far better reason, to reproach him for neither having solved it nor set it aside. They tell him, contemptuously, that, as matters stand, his system has not even a theoretical claim to the character of a system of positive law; that, in so far as it does not rest on treaties, it is mere ethical dogmatising; and that even where it does rest on treaties, it still falls short of the character of positive law, because the treaties themselves embody no permanent principle of legislation, and rest on no executive authority external to the contracting parties.

If this allegation were merely a manifestation of impatience with a system imperfectly realised, but which contained within itself the principles of its gradual realisation, the reproach might be borne with equanimity, if not with complacency. The conditions of the realisation of positive international law are, and always must be, brought into action with exceptional difficulty; and the scientific jurist is not responsible for the imperfect application which may be made of the means which he indicates. But these means must in themselves be adequate to the required end. Now this is the point at which international law differs from national law, and the point at which the international jurist becomes justly exposed to the ridicule of the municipal

¹ Bluntschli, *Kleine Schriften*, vol. ii. p. 281.

lawyer. No municipal system is either perfect in itself or perfectly administered; but the municipal system of every civilised State contains within itself the principles of its own realisation. Theoretically, at any rate, it is positive law—in other words, it is, *ex hypothesi*, the natural or absolute law of the relations subsisting between citizens, defined by an authority which, whether right or wrong, is capable of applying and enforcing its own definitions. Now, in this sense—the only sense in which, quitting the sphere of science, jurisprudence enters the sphere of action—there really is no positive international law at all. Public international law is neither defined nor enforced by any authority superior to that which its subjects retain in their own hands; and private international law is positive only to the extent to which, in virtue of its adoption by municipal systems, it ceases to be international.

That such is the character of international law as it exists, is indisputable, and will be undisputed by any one of whose opinion I need take account.

But it will be questioned by many whose views I am bound to respect, whether this fact compels us, as the only condition of its possible reversal, to face so formidable a problem as the creation of a self-vindicating cosmopolitan organism. Must the development of a system of positive international law be pronounced to be finally impossible, otherwise than in conjunction with a condition the impossibility of which most men have made up their minds to accept as an axiom? Are our existing means of defining and enforcing international law so faulty in principle as to cut off all hope of our ever arriving, by their aid, at a positive system?

and even if this be so, are there no other lines hitherto unexplored along which our search may be more hopefully prosecuted?

I do not acknowledge that, in order to warrant the resumption of this famous discussion, I must answer the latter supposition by an absolute negative. I am not bound to close, by the permanent barrier of facts or laws of nature, every conceivable avenue, except that which I seek to open. It may be that future ingenuity shall discover a self-adjusting balance of power, a self-modifying European concert, or some other hitherto unthought-of expedient, which, in the hands of diplomacy, will act as a cheaper and safer guarantee against anarchy than that which the analogy of national jurisprudence suggests. But I feel that I can ask for a reconsideration of what was substantially the proposal of my predecessors, only on the ground that, whilst vindicating the proposal itself from the imputation of running counter to nature, I can succeed in fixing that imputation on the means by which they sought to realise it, and on every other expedient now known to international jurisprudence.

An ingenious attempt is sometimes made to evade the question of international organisation, by alleging that the municipal organisation requisite for its realisation would obviate the necessity, and even remove the object of realising it. It is national not cosmopolitan freedom that is the object of international law. International organisation has thus no substantive value. It is not an end in itself. It is sought for the sake of national organisation alone; and yet national organisation is confessedly the condition of its

attainment, *sine qua non*, because it is only amongst recognised States that it is proposed to attempt it, and States are recognised only when they are organised. International organisation thus assumes the presence of the object which it seeks, and the conclusion in favour of its necessity resolves itself into a *petitio principii*. But the presence of fallacy in this objection becomes suspicious when we reflect that precisely the same objection may be made to the realisation of municipal organisation, and indeed of positive law in every direction. If international organisation requires organised States, municipal organisation requires organised citizens; and yet it is for the organisation of citizen life, and not for its own sake, that we seek to realise and develop national organisation. The condition of its existence is thus identified with its object, just as in the former case. The key to the apparent paradox, in both cases, is to be found in the law of action and reaction which governs the relation between civilisation and organisation. Each is alternately cause and effect. Savages are incapable of municipal organisation beyond its most rudimentary stages; and yet it is by means of municipal organisation that men cease to be savages.

Again, the value of the means diminishes as the end is neared, and vanishes with its attainment. Perfection in municipal organisation would cut off the necessity for international organisation no doubt; because perfectly organised communities would fall into their own places spontaneously — would voluntarily recognise their respective duties, and render the vindication of their rights superfluous. There would be no abnormal relations. The more nearly com-

munities approach perfection, the more nearly will this phenomenon be exhibited. But the same takes place in the case of progressive persons or progressive citizens, till with their perfection the function of positive law—private and public—disappears. The spirit supersedes the letter. Practically, however, in the case of States, as of persons or citizens, it is with a period of transition that we have to do; and a point will be reached in the sphere of international jurisprudence, just as it has been reached in the sphere of municipal jurisprudence, at which States are civilised enough to admit of organisation by means of positive law, and not civilised enough to dispense with it. Nor is there any reason to suppose that this will be a brief and transitory halting-point. On the contrary, as it is the normal, and, so far as experience has yet gone, the permanent position of civilised citizens, there seems every probability that it will be the ultimate position of civilised States. With the further question, whether or not it be within the power of humanity to transcend the conditions of its previous existence, and to shake off the fetters of positive law altogether, we need not trouble ourselves. Ideal States are as far removed from us as ideal citizens; and, as at present constituted, we can progress in the direction of either of them, only by such measured action and counter-action as shall enable us to supplement each other's shortcomings, and to correct each other's defects.

But progress in the direction of the ideal by means of mutual aid, regulated by positive law, though possible within the State *may* be impossible beyond it; the ultimate problem of international jurisprudence, whilst demonstrably inevitable,

may be demonstrably insoluble. The science of jurisprudence, when prosecuted in the direction of the law of nations, may end in a *reductio ad absurdum*. This consideration brings before us the next proposition which we are called upon to discuss.

CHAPTER II.

THE PROBLEM IS NOT INSOLUBLE.

The realisation of a jural organism within the sphere of the international relations, which shall embrace the three factors of positive law, is not impossible.

There are two kinds of impossibility, either of which may call for the abandonment of a political scheme—the one absolute and permanent, the other relative and temporary. Impossibilities of the former class exist wherever the scheme in question involves an unfounded assumption either of a fact or of a law of nature, or has for its object the reversal or modification of such fact or law. To schemes of this class belong all social and political projects which assume the equality of men or of States, whether as facts already existing, or as objects attainable by human effort. Men are not, and never will be equal: their equalisation is not within the reach of human will: and as the inequalities of classes and the inequalities of States are the direct and necessary results of the inequalities of individuals, they are equally certain and equally permanent. However fondly the dream

of equality may be cherished by the envious or the vain, whether it be manifested as an individual or a national aspiration, it is a chimera as unrealisable as the union of the head of a woman with the tail of a fish. To the same category of absolute impossibilities belong all schemes which, in this changing world, assume as existing, or seek to establish, permanent relations of superiority or inferiority, whether between individuals, or classes, or States, in place of accepting as their basis the facts presented by the contemporary history of mankind. Lastly, if we accept the optimistic postulate on which all jurisprudence rests—viz., that the universe, as a whole, is an ethical as well as a physical kosmos—then every scheme which does not seek ethical ends by ethical means must be ultimately unrealisable. It is a pessimist alone who can believe in the stability of any arrangement which does not recognise the reciprocity of rights and duties, and the necessary interdependence of all coexisting political entities. Rights and duties are the woof and the warp that weave the social weft, and the chief cause of failure in all ages and in every department of human effort has been the reluctance of mankind to recognise—

“Wie Alles sich zum Ganzen webt.”

If the action of ethical laws be as inevitable as the action of physical laws, it is as impossible to realise an anti-ethical scheme of government, whether from a despotic or a democratic point of view, as it is to interrupt the succession of day and night.

It is to this category of absolute impossibilities that I shall

endeavour to reduce all proposals for the realisation of a system of positive international law which either fail to accept the facts of nature as they are phenomenally presented to us, or which do not seek to curb the anti-ethical tendencies which these facts exhibit.

But what if this proposal should itself belong to the same category? What if the realisation of a jural organism within the sphere of the international relations should be shut out by permanent facts and laws? What if the domain of ethics under which personal and citizen relations fall, should stop at the borders of the State? In this case, however mournfully I might feel that its abandonment involved, so far as I could see, the permanent acceptance of international anarchy, I should unhesitatingly recognise the futility of all further discussion of the problem with which we are here occupied. I could not even dare to dream with Dante of universal empire, or to pray for the advent of Hobbes's *Leviathan*. The triumph of Nihilism would be the solution of the ultimate problem. But Nihilism fortunately does not rise to the level even of those half-truths which rest on one-sided conceptions of the human relations. It is a denial of these relations altogether; it has no element of cohesion, and the realisation of a nihilistic organism is as inconceivable as the existence of a web that had neither woof nor warp. In theory it is nonsense, and in practice it is crime.

However insuperable, then, may be the difficulties which for the present stand in the way of cosmopolitan organisation along ethical lines,—though its realisation in the existing conditions of humanity may belong to the second category of

impossibilities, which I have called relative—I think it will scarcely be possible to urge against it impossibilities of the absolute class. It necessitates, as we shall see, no proclamation, either of equality or of permanence in human relations. Its object is simply to realise in a wider sphere the necessary relation between rights and duties: and I know no element, either in the nature of man, or in the conditions of his existence on earth, which precludes the possibility, or even the hope, of his being able, approximately, to define and to vindicate his position as a citizen of the world, any more than as a citizen of the State. That there are special difficulties of a practical kind to be encountered in this region, amounting, it may be, even to relative impossibilities, I admit at the outset, and shall continue to recognise. A period of time, and a degree of advancement in the civilisation of individual States, to which I venture to assign no limits, will, I doubt not, be necessary for their removal. But to confound difficulties or impossibilities of this class, with those which oppose the realisation of such conceptions as the *Utopia* of Sir Thomas More, the *Republic* of Victor Hugo, or even Plato's *Republic* and Kant's *Perpetual Peace*, I must regard as indicating that want of the power of distinction which, Aristotle says, is characteristic of the vulgar.

The problem with which I am here to be occupied is one for which the generation to which I belong is probably not destined to find a practical solution; but it is a problem which future generations will assuredly continue to discuss, and it is the duty of those to whom its study, in each succeeding genera-

tion professionally belongs, to lend what aid they may to its ultimate solution. That the increased facilities for intercommunication which have been discovered in our own day have generated an international atmosphere greatly more favourable to the growth of international jurisprudence than that of fifty years ago, is unquestionable. The great impediment now is the hopelessness caused by the *debris* of impossible schemes which cumber our path, and from these it must be our first effort to clear it.

CHAPTER III.

OF THE DOCTRINE OF THE BALANCE OF POWER AS AN INDIRECT SOLUTION OF THE ULTIMATE PROBLEM.

By those who have felt, and more or less consciously recognised, the inevitable character of the problem with which we are here occupied, various attempts have been made to solve it indirectly. Their effort has been, not to found international institutions corresponding to national institutions, but to discover substitutes for them, confessedly less complete and symmetrical, but professedly more attainable.

Of these, the first which claims our attention is the diplomatic solution embodied in the doctrine of the "balance of power."

The doctrine of the balance of power has been regarded as embodying the fundamental conception of cosmopolitan organisation ever since the Peace of Westphalia in 1648, though it

is first expressly mentioned in the Treaty of Utrecht in 1713. The doctrine was by no means new even at the former period; but many circumstances in the then condition of Europe gave to it an importance which it had not formerly possessed; whilst by the institution of permanent embassies, usually, though not very accurately, ascribed to the same period, it was hoped that it might be so worked out in practice, as to render every State, as a condition of its admission into the family of civilised nations, substantially responsible for the continued existence and independence of every other State.

Viewed even as a theoretical scheme for the formation of a self-sustaining and self-adjusting political organism, the imperfection of the doctrine of the balance of power has all along been acknowledged and deplored. To define it with any approach to precision is impossible, and it has accordingly received as many interpretations as different States have entertained different opinions, or been swayed by different interests, at different times. But as some attempt at definition must always precede criticism, I venture to suggest the following as an approximate statement of its meaning.

The balance of power consists in such a distribution of territory and adjustment of alliances between separate States as shall either—

(a) Guarantee the permanence of their existing jural relations, at least to the extent of preventing them from drifting into universal empire, or :

(b) Substitute new jural relations in harmony with such new relations of fact as may have arisen.

The fundamental principle which this doctrine seeks to

realise in both its aspects is the principle of combination. It assumes the reciprocity of rights and duties, the ultimate community of interests between separate States and the possibility of attaining the object of their existence by mutual aid. There is reason enough in the world to control the unreason, there is virtue enough to control the vice, provided that virtue and reason can be brought into action by means of international combination. So far its soundness will be unquestioned, except by a small minority of pessimists or Manicheans. But to optimists it is merely the proclamation of a commonplace; and its acceptance by so many practical politicians is important only as a declaration of their adherence to the positive principle of mutual aid, as opposed to the negative principle of mutual indifference, and their consequent repudiation of the doctrine of absolute non-intervention. The doctrine of the balance of power is a proclamation of *solidarité* within the limits of recognition; of the interdependence as opposed to the independence of States: and though it has done little in practice to mitigate the egotism of separate States, it stands forth as a protest against such egotism on the ground of its folly, as well as of its immorality.

1st, *The first alternative: That the object of the balance of power is to guarantee the permanence of the existing jural relations of separate States.*

Though the natural forces of humanity, in combination, may be adequate to the attainment of the ends of nature, they will not transcend nature, or place States in their relations to each other beyond the reach of natural laws. This obvious consideration relegates the first alternative to the category of

absolute impossibilities. Permanence is an object which nature has forbidden to humanity, and for the attainment of which human forces will combine in vain. The history of States is a history not of permanence but of change; and in this respect, whilst they continue to be composed of human elements, the future will not differ from the past.

Nor is there any direction in which the justice of this inevitable law commends itself to our reason more obviously. From the magnitude and publicity of the phenomena, we can see in the history of States the relation between cause and effect, between fact and law, between might and right, with a clearness which is rarely possible when we contemplate the fortunes of individuals or of families. That Rome rose by her virtues, and fell by her vices, and that at each step of her ethical advance and decline her external and cosmopolitan relations kept pace with her internal and national condition, is far more obvious, though not more certain, than that a similar process took place in the case of the Julian family or of Julius Cæsar. It is for this reason that, in flat contradiction to the doctrine of the balance of power, when viewed as a declaration of the permanent "integrity and independence" of States, the *de facto* principle is universally recognised as the practical basis of international recognition. If legal relations are to be permanent, they can scarcely rest on facts every change of which we are legally bound to recognise; and yet such is the teaching of the doctrine of the balance of power, in what has always been its most popular acceptation. The *status quo* established at Münster, at Utrecht, at Luneville, at Vienna, at Paris, at Berlin, were

all to be permanent ; and as their permanence was guaranteed by the doctrine of the balance of power, it is not difficult to see how that doctrine came to be, in itself, a perpetual *casus belli*.

But though the wheels of change cannot be arrested, may they not be directed, or turned aside, so as permanently to avert the occurrence of events which the general reason regards as likely to prove detrimental to the progress of mankind — to the realisation of the objects of human life ? Though it may be impossible, or, if possible, unjust, to prevent one State from advancing and another from retrograding in international importance, may it not be at once possible and just to prevent one State, or one race, from swallowing up all the others ; or two or three of the larger ones from absorbing the smaller ones, and thus dividing the world amongst them ?

Are the different races and the separate political organisations to which they have given rise quietly to fold their arms and look on, whilst the dream of universal empire is being realised ; or are they even to permit the greater Powers to swell to such magnitude as to place the secondary States in the position of their dependants, possibly of their tributaries ? Is even the existing hexarchy, which is not yet twenty years old, jurally defensible as a permanent institution ?

Now, even when tried by this crucial test, the *de facto* principle that law must take fact as it finds it, holds good. Universal empire *in fact* would justify its recognition *in law*. But universal empire *in fact* means the substitution, not of one nation, in the technical sense, but of one nationality, for the

various nationalities which at present constitute the body cosmopolitan. It means that the whole world known to international law should become either French, or German, or Russian, or English, or something which is all of them and none of them; and this not in name only, but in deed—that it should become one in feelings, habits, manners, culture, aspirations, religion, and speech. Inasmuch as the diversities of race are probably indelible, and diversities of climate and geographical position, on which diversities of nationality so largely depend, are certainly permanent, the occurrence of so extravagant a supposition seems almost to be shut out by a natural law. In so far, moreover, as the teaching of experience can be appealed to, it would seem to show that, in place of the existing race-distinctions giving way, their tendency is to assert themselves in the form of separate political organisations more and more definitely, and that new nationalities and even race-distinctions springing out of their intermixture will gradually manifest themselves. Nationality is said to be the principle which dominates the present epoch in Europe.¹ When the earlier processes of colonisation have been completed, the presence of the vast Germanic element which is flowing into the United States of America will probably assert itself both in the habits and the speech of particular districts; and the great Polynesian Republic, of which men already begin to speak, will no doubt develop a type of national character differing from that of the mother-country quite as decidedly as that of the United States does at present. Even as regards diversity, however, permanence

¹ *Traité de Droit International*, par F. de Martens, vol. i. p. 193.

is scarcely a word for human use. We do not know what a millennium of constantly increasing intercommunication may bring forth. We are no more entitled to set limits to the assimilability than to the perfectibility of mankind. There may be an ultimate type in which our physical, intellectual, and moral development shall culminate. But for the present it may suffice as a warrant for resisting any claim to its recognition *de jure*, that it has as little existence *de facto* as the equality in which extreme democracy seeks its justification. National assimilation to the extent of removing international barriers, is more conceivable, no doubt, than individual assimilation to the extent of removing the grounds of individual distinction; but both occurrences, in point of fact, are so improbable as to reduce to absurdity any jural scheme which claims acceptance only as a guarantee against them.

In so far as the doctrine of the balance of power has for its object to prevent the accumulation of power in particular centres, to such an extent as to prejudice free development in other directions, it is itself a scheme of development, in which case its legitimacy depends on its efficiency.

It thus falls under our second alternative of a means for adjusting law to fact. If the principle of combination in the form in which the doctrine of the balance of power seeks to apply it, be capable of continuously harmonising law and fact, we need seek for no more perfect scheme of international organisation.

2d, The second alternative.

The second alternative embraced in our definition of the balance of power—viz., that its object is “to substitute new

jural relations in harmony with such new relations of fact as may have arisen," brings the scheme, as regards its object, into conformity with positive law in general. Its end is legitimate; and our inquiry must consequently be into its adequacy as a means to this end. Now assuming this end—bringing and keeping positive law in harmony with fact—to be fairly attained in the relations of citizens to each other and to the State, within its borders, by means of the three factors legislation, jurisdiction, and execution, and probably to be attainable beyond its borders only by similar means, the most convenient mode of arriving at an opinion as to the value of the doctrine of the balance of power will probably be to ask ourselves whether it offers any equivalents for these factors.

(a) *Legislation*.—Does the doctrine of the balance of power offer a substitute for the action of a national legislature?

Legislation is essentially prospective and general. Its object is to give formal expression to the rules which the reason and experience of a whole community have dictated for its guidance. By defining a jural relation, legislation provides a general rule from which it is the function of jurisdiction to deduce answers to such special questions as may in future arise between the parties related. Moreover, all true legislation, embracing the whole community, is self-legislation—legislation by, as well as for, its several members. The parties to whom a legislative rule applies having themselves assented to it before their reason was clouded and their will vitiated by the exceptional influences of passion and of selfishness, when judged by it they are judged by their own law. However much their proximate will may now be opposed

to it, it is, *ex hypothesi*, in accordance with their ultimate will, and the maxim *volenti non fit injuria* applies to them.

But the reverse of all this is the case with the doctrine of the balance of power, both as regards its origin and its action. It is essentially retrospective and special. If we dismiss the vindication of the *status quo*, it formulates no general rule whatever. It waits for the occurrence—the difference or disturbance—with which it deals, and it deals with it in accordance with a rule which must be formulated at the time, by the very parties who are to administer the rule, and with reference to that occurrence alone. Nay, further, the occurrence for which it waits is its own subversion; for it is this alone which calls it into activity as an international law, or warrants its vindication as an international arrangement. The ideal of the balance of power, in so far as an ideal can be assigned to it, is, I suppose, the *status quo*, not as unchangeable, but as it presents itself at each moment of its ever-changing existence. Till this moment has passed the doctrine in question affords no warrant for interference; and when the moment has passed, the next phase of the *status quo* realises this ideal balance equally well, and there is still no room for action. Viewed as a rule of future action, the doctrine of the balance of power, having no future ideal to realise, has no object to aim at, and it resolves itself into an empty diplomatic fiction.

But a doctrine which has no object of its own possesses the convenient peculiarity that it may always be directed to the attainment of the object of him who invokes it; and if the doctrine of the balance of power has had no uses it has

had many abuses. Each anticipated or pretended disturbance of the *status quo* has furnished a pretext for breaking the truce on which the balance rested, and the war which followed has had quite as much justification, and the new *status quo* just as much ethical and jural validity as that which preceded it. In other words, the doctrine of the balance of power from first to last has been a mere proclamation of international anarchy; and the only ground on which I dissent from the oft-repeated condemnation of it by a recent royal writer as "atheistical and anti-social" is, that he has limited his condemnation to the period of its action which has elapsed since 1648. The thirty years which followed the Peace of Westphalia were surely no worse than the thirty years which preceded it; and I shall continue to believe that the central current of international life has been gradually clearing itself, notwithstanding the streams of anti-jural mud which flowed into it continuously from above, till their passage was silted up by the still fouler mud from below which was stirred up by the French Revolution. When the counteracting vices of dynastic selfishness and democratic envy have further exhausted themselves, we shall hope that room may be found in the wider international fields for those sympathetic relations between civilised States which already, as a rule, bind civilised citizens together.

(b) *Jurisdiction*.—Does the doctrine of the balance of power, then, supply a substitute for the factor of jurisdiction in municipal jurisprudence?

Jurisdiction is the application of a general rule to a special case. But where there is no legislation, there can, as we have seen, be no general rule, and consequently there can be no

jurisdiction. Where the judge makes the law which he administers, legislation is confounded with jurisdiction, just as we formerly saw that jurisdiction was confounded with legislation.

(c) *Lastly, does it supply execution?*—Execution which is warranted neither by legislative enactment nor by judicial sentence is the mere arbitrary application of force. It may be well applied; but for its being so we have no higher guarantee than the present impulse of the party who applies it.

Moreover, the coalition which the balance of power calls into existence for the special occasion no more exhausts the force than it exhausts the reason of the whole community of nations. Resistance to it is consequently not impossible, at least not necessarily impossible, as is the case where an individual citizen comes in contact with a municipal executive, which gives effect to municipal legislation. In this case the power opposed to the individual is put in motion by the normal will of the whole community, his own included; and he has nothing to fall back upon but his own exceptional will and power. In so far as he is concerned, the power opposed to him is obviously irresistible; and as it is irresistible power alone which acts peaceably, we have in its existence an explanation of the fact of the peaceful action of municipal law. If the international peace party could be made to see that it is the defect of force as a guarantee for international law, when contrasted with its excess as a guarantee for national law, that leads to war in the former case and not in the latter, their aspirations would be for the better direction of force, not its abolition. The only means by which the ruinous standing armies which sap the resources of modern States can

be got rid of is by giving to them, in the first instance, a common object, and thus bringing them to act in the same direction. If by means of international arrangements the same unity of purpose could be given to the cosmopolitan executive as the municipal executive of an organised State possesses, a very small international executive would suffice. The ultimate preponderance of might is inevitable, and if we believe in God's government of the universe, we must assume it to be right, for in Him might and right are one. It is the necessity of ascertaining, on each special occasion, the side on which might really lies, and the possibility of the temporary triumph of ultimate weakness, that is the cause of international war; and the removal of that cause does not lie, even theoretically, within the scope of the doctrine of the balance of power.

CHAPTER IV.

OF VOLUNTARY ARBITRATION AS THE SCIENTIFIC SOLUTION.

The answer on which scientific jurists of the present day for the most part rely rests on three assumptions:—

- (a) That every legal relation is governed by an absolute law.
- (b) That the concrete elements in any given relation being known, this absolute law may be discovered in its positive form.
- (c) That the law being discovered, the reason of civilised nations will form a sufficient guarantee for its voluntary acceptance.

The latter assumption, alone, I regard as inadmissible.

The difficulty of obtaining concrete information may render the elaboration of positive law scarcely possible to the jurist who has no means of stepping beyond the sphere of science. But even internationally, we live so much more in the light of publicity than in former times, that this difficulty diminishes year by year; and it is at least conceivable that a body of men of science, such as is now comprised in the Institute of International Law, or even one isolated scientific jurist of exceptional ability, might declare positive law as truly as any international legislature.

An international code, then, corresponding to the national codes which we already possess, is not an absolutely unrealisable conception, and very important practical benefits might be anticipated from a general treaty embracing such provisions as Mr Dudley Field has embodied in his *Outlines*.¹ Where the screw is really loose in the scientific solution, is, as I have said, in the third assumption. It, unfortunately, is not true that reason, self-interest, or any motive whatever, short of physical necessity, will form a sufficient guarantee for obedience to positive law by ordinary men whenever it is at variance with their apparent or immediate self-interest, or is in conflict with their passions. Positive law is a dead letter which force alone will bring to life. Even municipal law, though defined by the joint action of legislation and jurisdiction, is not self-vindicating. It requires the further guarantee of an *irresistible* executive to secure its peaceful acceptance. A

¹ I rejoice to see that this careful and valuable work has now reached a second edition. At page 367 the author has offered suggestions for the enforcement of the terms of arbitration.

stage of civilisation is no doubt conceivable in which mankind should voluntarily accept the dictates of reason, and in which the executive function of government should find no place, even whilst the legislative and judicial remained. An honest man, though perfectly willing to pay a debt, might require the judgment of a court of law to convince him that it was due. Nor is a similar stage of international development beyond the sphere of human possibilities. But municipal law makes provision for dishonesty and folly, as well as for honesty and common-sense, so long as it recognises their existence in point of fact. Till international law does the same, it must be contented to remain within the sphere of science.

Those who distrust arbitration have often remarked that a decree-arbitral, except where, by registration for execution or some similar expedient, it comes within the scope of municipal law, is a mere appeal to the honour, good faith, or wisdom of the parties themselves, and has no more guarantee for its fulfilment than if it had been pronounced from a pulpit or a professor's chair. The only condition on which tribunals of arbitration could perform the offices which many are willing to assign to them, would be the previous existence of an international organisation, strong enough to support them from without, as they are supported in municipal jurisprudence.

In saying this I am far from disparaging either arbitration or the scientific activity to which it professes to give practical expression. So long as States remain isolated as at present, the only hope of their peaceful coexistence rests on their progressive enlightenment, and the form of enlightenment most important for that object is enlightenment with reference to

their respective rights and obligations. It is this enlightenment which the scientific publicist seeks to communicate, and his entire success would, no doubt, take away the necessity for any compulsitor beyond public opinion. England was enlightened enough to accept the decision of the arbitrators of Geneva in 1872, though it rested on a definition of neutrality, drawn up for a special purpose, to which I cannot concede the character of science. Had the common law of nations been followed as the *ratio decidendi*, perhaps America might have been enlightened enough to have accepted an opposite verdict. But the arbitrators administered a retrospective rule which rested on a treaty, negotiated for a special purpose, and which had no legislative authority external or superior to the present will of the parties to the suit; and the validity of their decision was guaranteed by nothing beyond the might which they could reciprocally bring to bear on each other. Had the question been between England and Greece, or between America and Mexico, does any one imagine either that the antecedent treaty would have been negotiated, or that the award would have been accepted? Or, if either England or America had repudiated it, what alternative was there but war? ¹

I am aware that judicious advocates of arbitration, even when regarding it as the only method of adjusting international disagreements by peaceable means, limit their hopes of its action to minor differences. M. Rolin Jaequemyns, in the interesting discourse on the subject of which I have

¹ For the valuable suggestions for the preparation of treaties of arbitration drawn up by the Institute, see Appendix No. XV.

already spoken,¹ excludes from the sphere of arbitration (p. 9) all questions which menace the honour or the existence of States. But if the sphere of arbitration be thus limited, may we not ask whether the class of cases which remain to it be not precisely those which have hitherto been disposed of just as surely and economically and far more quietly by diplomacy? The percentage of international differences which led to war was always limited, and if this percentage cannot be limited still further by referring some of them to arbitration, then arbitration becomes merely a method by which diplomatists may ascertain facts, assess damages, and the like. And this was precisely the *rôle* which it played in the great Alabama case, about which so much has been said. It was the negotiation of the Treaty of Washington, not the judgment of the arbitrators, which prevented war between England and America; and the Treaty of Washington would never have been negotiated had not English public opinion already determined that there should be no war.

CHAPTER V.

THE ECONOMICAL SOLUTION.

The third indirect answer to the problem of international organisation, of which Mr Seebohm² is by far the ablest exponent, rests on two assumptions:—

¹ P. 183.

² *Of International Reform*, by Fred. Seebohm, 1871.

(a) That the interdependence of progressive States is necessarily progressive.

(b) That progressive recognition *de jure* of this interdependence *de facto* will necessarily result from experience of its material effects.

Both of these assumptions I believe to be fundamentally sound ; and the second has the merit of pointing out an agent, of no insignificant importance, which is really at work, not in superseding, it is true, but in building up and developing the structure of international organisation. That nations become more dependent on each other for their food-supply as they increase in population and industrial activity, there can be no question ; and as nations are no wiser than the individuals who compose them, it is important to bear in mind that the most cogent argument that can be addressed to an empty head is that which proceeds from an empty belly.

But though hunger be a great, it is not an infallible teacher, and it is scarcely one that we would willingly employ. If it explained the remedy for its existence from the first, it would never exist at all ; for no man would starve if he saw that he could avoid it by sending to his neighbour for a loaf ; and when hunger does explain and point out its own remedy, the opportunity for resorting to it may be past. It is too late to learn that we are dependent on the doctor after we are too weak to go to him, and too poor to pay him for coming to us ; and it will be too late for a manufacturing State to go to an agricultural State when it has lost its shipping and has no manufactures to exchange for corn and wine. The great error of the economical theory, indeed, consists in regarding the law

of interdependence as governing the trading relations of States in *some* exceptional manner, whereas it is the law which governs all human relations whatever—nay, is the very meaning of a relation. Interests are reciprocal and coextensive, just as much as rights and obligations. The buyer is not more dependent on the seller and the seller on the buyer, than is the husband on the wife and the wife on the husband; and if positive law, resting on an organisation guided by reason, not infallible certainly, but independent of ephemeral folly and passion, be necessary to determine matrimonial relations, why should it not be necessary to determine trading relations? Has no State ever run into war, or sunk into anarchy, to the detriment of its material interests? Has no State ever squandered its resources, and incurred the penalty of starvation?

If unimpeded in their action, it is true that the laws of trade will vindicate themselves, and men will buy in the cheapest and sell in the dearest market. But free trade demands freedom; and freedom in the material, as in the moral sphere, can be obtained only by an appeal from the abnormal and exceptional, to the normal and general will, an appeal which demands international, just as much as national organisation. Had Adam Smith been as successful in teaching political philosophy to the English as he was in teaching them political economy, such a book as Mr Seeböhm's would not have been written.

CHAPTER VI.

THE RELIGIOUS AND EDUCATIONAL SOLUTION.

The indirect solution to our problem which commends itself to the vast majority of those who have no very definite conception of its character, rests on the progress of civilisation to be brought about by religious and secular education. Nations, it is said, will surely soon become enlightened enough to see the ruinous cost of war, and will learn to settle their disputes by peaceful means. Diplomacy in its existing form, or with the addition of voluntary tribunals of arbitration, will then render all further organisation for legislative, judicial, and executive purposes superfluous.

That the progress of civilisation has the effect of narrowing the sphere of positive legislation, and consequently of jurisdiction, is a fact which I have often pointed out. It finds its complete analogue in the restriction of the sphere of medicine which results from the progress of public health. But, then, are not legislation and sanitary arrangements the two most potent factors in producing these effects? And to hope that civilisation and education will act spontaneously, is to look for effects without intelligible causes, and ends without visible means, which is just as absurd in the international sphere as in any other. Unless we can discover some new and unthought-of means, then, our only hope of reaching the end in the international domain which we have reached in the municipal domain, is to

adapt the means with which we are acquainted to the new circumstances in which their action is called for.

CHAPTER VII.

SCHEMES FOR THE DIRECT SOLUTION OF THE PROBLEM OF INTERNATIONAL ORGANISATION.

Conscious of the imperfections of the doctrine of the balance of power, and of all other attempts to give a positive character to international law without resorting to the means by which that object had been more or less perfectly attained in municipal law, speculative jurists have long been occupied with schemes for the creation of an international government, which should embrace the functions of legislation, jurisdiction, and execution. To these schemes I must now invite attention.¹

The earliest, and still the most celebrated of these "limited ideals," as they have been called²—to distinguish them from schemes like Plato's Republic and More's Utopia which embrace the internal economy of States and the reorganisation of society—is that which Sully has ascribed to Henry the Fourth of France, and which, there is no reason to doubt, occupied much of his attention, as well as that of his gifted minister, and of our own Queen Elizabeth.³ Sully has ex-

¹ M. de Martens, p. 288, mentions several others.

² *Methods of Observation and Reasoning in Politics*, vol. ii. p. 284.

³ As to Henry's relation to the scheme, Bluntschli has the following instructive note (*Kleine Schriften*, vol. ii. pp. 282, 283):—

"Ranke (*Französische Geschichte*, ii. 135) bezweifelt dass Heinrich IV. wirklich

pounded it at great length in his *Mémoires*, but its leading features have been thus summarised by Sir George Lewis.

"This scheme," he says, "proceeded on the basis that the religious creed of each European country, whether Catholic or Protestant, was to be recognised and maintained; that the infidel Powers should be expelled from Europe; that Europe should be repartitioned, with a view mainly of diminishing the power of the house of Austria; and that a federal council, with a federal army and navy for all the European States, should be established. By these means, it was thought, a perpetual peace would be preserved among the members of the great Christian republic."¹

Putting aside the relation in which it stood to the political

solche Pläne gehabt habe und nennt diese Politik eine chimärische. Aber es ist vollkommen beglaubigt, dass nicht bloss der idealistisch gesinnte Statsminister, sondern wenn auch vorsichtiger und selbstsüchtiger, der König selbst, während vieler Jahre den Plan fortwährend erwogen und im Stillen für seine Ausführung gearbeitet hat. Die Aufzeichnungen Sullys (vgl. die *Oeconomies royales*) geben darüber sicheren Aufschluss. Vgl. überdem Hardouin de Préfixe *Histoire du Roy Henry le Grand*: Amsterdam, 1662, S. 454 f. Martin, *Histoire de France*, Bd. x. s. 491. Wolowsky in den Berichten der Académie des sciences morales et politiques: Paris, 1860, &c. In den *Lettres intimes de Henry IV.*, herausgegeben von Drussieux, Paris, 1876, finde ich einen Brief des Königs an Rosny vom 10 April 1603, der deutliche Anspielungen auf diesen Plan enthält und über die intimen Beziehungen Heinrichs IV. zu der Königin Elisabeth von England Aufschluss gibt.

"Ebenso in der vertraulichen Unterhaltung des Königs mit dem Minister zu Fontainebleau im Mai 1605, und in dem Briefe des Königs vom 8 April 1607. Allerdings ist es wahrscheinlich, dass der eigentliche Vater des Gedankens Sully war, aber gewiss, dass der König den Gedanken aufnahm, vielleicht berichtigte und jedenfalls die Ausführung desselben auch durch Verhandlungen mit der Königin von England, deutschen Fürsten, venetianischen und schweizerischen Statemännern anstrebte. Das war ihm freilich sehr klar, dass das Haus Habsburg erst besiegt werden müsse, bevor es sich zu dem Bunde herbeilasse."

¹ *Ib.*, p. 285.

complications of the time, the conception was a noble one; whilst the position of its authors, no doubt, rendered its realisation more hopeful than that of any subsequent scheme. As regards its authors, at all events, Sully's prediction has proved true, when he says of them that they were "Les deux têtes couronnées, que la postérité regardera comme les plus excellens modèles dans l'art de régner."¹

But the scheme itself exhibited the same fundamental errors which we have discovered in the doctrine of the balance of power, and which, we shall see, vitiated all the others.

In aiming at the equal representation of groups of States which were to continue to be unequal, and at the establishment of a new *status quo* which should be final, it sinned against nature in two directions, and adopted objects the attainment of which can be declared to be impossible on absolute grounds. It is curious and interesting to find that the first of these objections, by Sully's own confession, was pointed out to him by Elizabeth herself. Describing his visit to her, he says: "Je la trouvai fort occupée des moyens de faire réussir ce grand projet: et malgré les difficultés qu'elle imaginait dans ces deux points principaux, la conciliation des religions, et l'égalité des puissances; elle me parut ne point douter qu'on ne pût le faire réussir."²

The spirit of wise toleration which dictated the Edict of Nantes might have carried Henry over the religious difficulty, grave though it was; and in advocating free trade he showed

¹ *Ib.*, p. 371.

² In giving the authors of the scheme credit for adopting the principle of relative as opposed to absolute or "mathematical" equality, Bluntschli (p. 284) has paid them too high a compliment.

how greatly he was in advance of his age. But the contrast between the distribution of power and of territory which he imagined, and that which actually resulted from the action of the latent forces which he failed to observe, proved how little he was in a condition either to anticipate or to control the rise and fall of States. One can scarcely repress a smile at his suggestion for the solution of the Eastern question—viz., that in the event of the “Muscovite” declining to accept his position as one of the fifteen equal Powers, he should be sent out of Europe along with the Turk.¹ In the frequent enumerations of the existing States which occur in Sully’s pages, moreover, it is instructive to observe that Prussia, even in its incipient form of the Duchy of Brandenburg, is not once mentioned. Such words as “*irrévocable*” and “*irréformable*” are as meaningless in the mouths of princes as of other people.

Apart from all other objections, moreover, the proposal for the repartition of Europe embraced in this scheme² must have been utterly fatal to it. Its adoption would have been a proclamation of universal war. It is the existing partition alone, whatever may be its absolute merits or defects, which can form the starting-point of any arrangement that is to be peaceably accepted; and it is not for its present but for its future modification in accordance with the unforeseen tendencies of future events, that the scheme must make provision. Every change in the partition of territory, however necessary it may become, will always be an occasion of danger to the whole organisation; and to start by proposing a series of such

¹ *Mémoires*, vol. i. p. 369.

² *Ib.*, p. 382.

changes, would be as insane as to propose that they should be permanently excluded.

Leibnitz, carrying out his great conception of "harmony" in the sphere of international politics, held that Christendom ought to become one grand republic of States, governed by a permanent council, or by a senate delegated by them. But he did not work out his conception into a complete system; and in the wake of the great Henry followed the Quaker, William Penn, whose essay preceded the more celebrated one of Cardinal Alberoni.

Neither of these, however, occupied public attention at the time, or influenced subsequent speculation to the extent of that of the Abbé St-Pierre.

Charles Irénée Castel de Saint-Pierre, who must not be confounded with Jacques Henri Bernardin de Saint-Pierre, the author of *Paul et Virginie*, was a French publicist and miscellaneous writer of the earlier part of the eighteenth century. In 1713 he had been taken into the Conferences at Utrecht by Cardinal Polignac; and so deeply was he impressed with the difficulties which had attended the settlement of "the Peace" on that occasion, that he drew up a scheme for rendering it *perpetual*. To his work he gave the name of *La Paix perpétuelle* — an unfortunate name, which has been adopted by most of his successors, and has done much to prejudice ordinary readers against the benevolent, and, when rationally understood, the not irrational object which he had in view.¹

¹ There were two works — 1st, *Projet de Traité pour rendre la paix perpétuelle*, &c. (Utrecht), 3 vols., 1713; and *Abrégé de Projet de paix perpétuelle*, 3 vols., 1729.

But it correctly characterised St-Pierre's project, of which the first article was that "a perpetual alliance should be established between the members of the European league, or Christian republic, for their mutual security against both foreign and civil war, and for the mutual guarantee of their respective possessions, and of the treaties of peace concluded at Utrecht." The second article proposed that each ally should contribute to the common expenses of the alliance a certain sum monthly; whilst the third article provided that they should renounce the right of making war against each other, and accept the mediation and arbitration of the general assembly of the league. The principal sovereigns and States who were to compose the league, to the number of nineteen, were arranged in a certain order of precedence,—the King of France coming first, the Emperor of Germany second, the fifth place being assigned to the King of Great Britain, Elector of Hanover, and the last to the King of Sardinia. Three-fourths of the votes were to be necessary for a definite judgment; but each of these nineteen Powers was to have a *single vote* in the European diet, the smaller republics and princes being grouped together with the right of giving a single collective vote, as in an assembly of the German Confederation. Here, as in Henry IV.'s scheme, we have at any rate a partial repudiation of the doctrine of absolute equality which did not take a permanent hold on international politics till it was introduced into national politics by the American Declaration of Independence and the French Revolution.

The fourth article stipulated that if any of the allied Powers should refuse to comply with the judgments of the grand

alliance, or should negotiate treaties, or prepare to carry on war, the alliance should arm and act offensively against the contravening Power, until it was reduced to obedience.

The fifth article declared that the general assembly of plenipotentiaries should have power to enact by a majority all laws necessary to carry the objects of the alliance into effect; but no alteration in the fundamental articles was to be made without the unanimous consent of the allies.¹

Mr Wheaton has remarked the almost verbal coincidence of these articles with those of the fundamental act of the Germanic Confederation, established by the Congress of Vienna in 1815.

What were the errors, and what has been the fate of that confederation we now know; and it cannot, therefore, be a subject of regret that St-Pierre's scheme was not brought to the touchstone of experience on the wider arena for which he designed it. Its errors, I think, plainly were *three* :—

1st, Like the doctrine of the balance of power—which it was an attempt to embody in a positive institution—it aimed at finality, the realisation of which was an impossible object, and would not have been a just object, had it been possible.

2^d, Notwithstanding the order of precedence which it fixed for diplomatists, it recognised an equality of votes between States which were not equal (*e.g.*, France and Sardinia), and thus separated law from fact.

3^d, For certain purposes it required a unanimous consent, which can never be attained in any deliberative body, except

¹ Wheaton's *History*, p. 263.

by means which negative the idea either of honesty or of free-will, and consequently of consent, altogether, in some of the members.

The very same errors are perceptible in Rousseau's little work, published in 1761, to which, though strongly marked with the traces of his personal modes of thought, he modestly insisted, against the remonstrances of his publisher, on giving the title of *Extrait du Projet de Paix perpétuelle, de M. l'Abbé de St-Pierre*. But the truth which lay at the bottom of St-Pierre's scheme is urged by Rousseau with his characteristic eloquence. "A very superficial view of political societies," he contends, "will be sufficient to convince us that the greater part of their imperfections springs from the necessity of devoting to their external security those cares and those means which ought to have been devoted to their internal development." If there be any practicable means of avoiding the evils of war, Rousseau holds that they must be sought in the establishment of confederations, by which distinct communities may be bound together, as the individual members of a particular State are now united in one society. Rousseau was a great admirer of the Germanic Empire, as established at Münster in 1648; and I concur with him to the extent of preferring it to the Confederation of 1815—the *Bund*—officially and ironically so called. The following remarks, which I give in the translation and synopsis which Mr Wheaton has made of them, apart from the notion of finality which pervades them, are eminently enlightened and judicious:—

"If the present political system of Europe cannot be shaken by the preponderance of any one Power, it must be admitted

that it is only maintained in this position by an action and reaction, which keep its different parts in a perpetual agitation, unfavourable to the internal prosperity and development of each particular State. In order to substitute for this imperfect association a solid and durable confederacy, all its members must be placed in such a state of mutual dependence that no one shall be able to resist all the others united, or to form separate alliances capable of resisting the general league. For this purpose it is indispensable that the Confederacy should embrace all the European Powers; that it should have a supreme legislature capable of establishing general regulations for its government, and a judicial tribunal adequate to give effect to these regulations; that it should possess a coercive power capable of restraining and compelling the action of its members, and sufficient authority to prevent any of them from withdrawing from the union whenever caprice or interest may dictate. Nor would the establishment of such a Confederacy be attended with insurmountable difficulties. It is only necessary that statesmen should renounce the puerile prejudices of their craft; that sovereigns should abandon the uncertain objects of vulgar ambition for the certain security which would be afforded to themselves, their dynasties, and their peoples, by the proposed innovation; and that nations should relinquish those absurd prejudices which have hitherto induced them to consider difference of language, race, and religion as constituting insurmountable obstacles to a more perfect union among the members of the great European family." "Only these trifles!" said Frederick the Great, when Voltaire expounded the scheme to him; and history has too well justi-

fied his cynicism. The fact that another hundred years and more have elapsed, and that still these simple requirements are unattained, must be admitted, I fear, as an indication that, if not unattainable, they present greater difficulties than Rousseau contemplated.

More than thirty years later, but still under the old name, a work on the same subject, by the great philosopher of Königsberg, appeared; and in one of the last of all his works—his *Metaphysics of Law* (1797)—Kant left, as Whewell and Brougham, and our own Brewster have done in our own day, an expression of his final opinion, to the effect that the elaboration of a system of mutual responsibility amongst States, is the problem *par excellence* of international jurisprudence. The subject occupied much of the attention of Kant's great mind before it experienced the eclipse which darkened his last days; and many of his observations are greatly in advance of his predecessors. His views have been excellently summarised by Mr Wheaton;¹ and to his pages I refer those who may not find leisure to peruse the original works. The following passages, however, I must quote, as indicating the direction in which, as it seems to me, we must look for its practical application. Kant's first proposal is a Confederation of Free States. In the *Paix perpétuelle* he says: "Nations must renounce, as individuals have renounced, the anarchical freedom of savages, and submit themselves to coercive laws; thus forming a community of nations (*civitas gentium*), which may ultimately extend, so as to include all the people of the earth." But in the subsequent work, the difficulties attendant on this

¹ *History*, p. 750 *et seq.*

proposal seem to have forced themselves more strongly on Kant's mind, and he there says: "The establishment of perpetual peace, which ought to be considered as the ultimate object of every system of public law, may perhaps be considered as impracticable, inasmuch as the too great extension of such a federal union might render impossible that supervision over its several members, and that protection to each member which is essential to its ends. But the establishment of those principles which tend to further this object, by forming such alliances between different States as may gradually lead to its accomplishment, is by no means an impracticable idea, since it is grounded upon the rights and the duties of men and of States." But it is in the following passages that he comes on what, I think, is the true conception of an international legislature: "Such a general association of States," he says, "might be termed *the permanent Congress of Nations*. . . . *What we mean to propose is a general congress of nations, of which both the meeting and the duration are to depend entirely on the sovereign wills of the several members of the league, and not an indissoluble union like that which exists between the several States of North America, founded on a municipal constitution. Such a congress and such a league are the only means of realising the idea of a true public law, according to which the differences between nations would be determined by civil proceedings, as those between individuals are determined by civil judicature, instead of resorting to war—a means of redress worthy only of barbarians.*"¹ In this passage Kant guards himself, as if by anticipation, against the

¹ P. 754.

imputation of desiring to establish a Universal State, which Bluntschli has made against all his predecessors, with the single exception of Henry IV.

In arriving at this final opinion in favour of a confederation with a self-modifying constitution, which should give expression to its will by means of a congress, as opposed to any stricter bond of union, Kant reverted, moreover, to the opinion of Grotius, who was scarcely a less ardent lover, though he was a less hopeful advocate of peace. "It would be useful, and indeed is almost necessary," says Grotius, "that congresses of Christian princes should be held, in which controversies which arise among some of them may be decided by others who are not interested, and in which measures may be taken to compel the parties to accept peace on equitable terms."¹ After quoting this passage in the preface to his edition of Grotius, Dr Whewell adds these words of encouragement: "I trust that all students and professors of international law will consider themselves as labouring upon a problem which is still unsolved while war exists, and in which all the approximate solutions must make war more rare and more brief, as well as more orderly and more humane." It was as his own contribution to this "approximate solution" that Dr Whewell undertook his edition and translation of Grotius, and that he subsequently bequeathed his munificent endowment to the chair of international law at Cambridge.

Intermediate in date between the works of Rousseau and Kant is Bentham's essay on *A Universal and Perpetual Peace*. Few of Bentham's works exhibit more favourably

¹ L. II. c. xxiii. § x. art. 4.

his pithy and caustic style, or his shrewdness in estimating the springs of human action. Though not published till after his death, it was written between 1786 and 1789. He was then in the enthusiastic period of his manhood; and if any one was ever to be in a condition to bring a scheme of international organisation within the sphere of practical politics, or to commend it to the English public, it ought to have been Bentham, during the many years of activity which remained to him.¹ The chief cause of his failure is probably to be found in the fact, that one of the two preliminary conditions of peace on which he insisted was the abandonment of their colonies by all the States of Europe. It was a proposal to which no State could be expected to assent, and to which, except in the case of colonies that had attained majority, no State ought to have assented. And yet it was the clearness with which Bentham foresaw the near future, more than even the pressure of contemporary events, which dictated to him this condition. "In case of a war, where, at present (1789), would England make its first and only attack upon France? In the colonies. What would she propose to herself from success in such an attack? What but the depriving France of her colonies? Were these colonies, these bones of contention, no longer hers, what then could England do?"²

A decade had scarcely passed before the prediction was fulfilled, and Bentham himself lived to see the colonial empire of England become an object of far greater envy to the rest of mankind than that of France had ever been. Had he lived

¹ Bentham was born in 1749, and died in 1832.

² Wheaton's *Hist. of the Law of Nations*, p. 335.

to our day, he probably would have recognised in her adult children the protectors as well as the *protégés* of the mother-country; and as England during the last half-century has suffered less from war than any other State, no great evil has come of their retention. Bentham could scarcely have continued to urge their abandonment in the name of peace, though he probably would have done so in behalf of freedom. When a colony becomes capable of self-protection and self-control, its separation from the mother-country, whether claimed by it or not, falls within the objects of jurisprudence. Its jural condition is that of separate political existence. But it would be a narrow view of our duties as a nation which should induce us to thrust from us dependencies which claimed our protection, merely because they yielded us no revenue and no international support; and it would be a narrow view of the interests of mankind were any other nation to break in from motives of envy on that *pax Britannica* which, to so many races, in so many regions, is the only refuge from anarchy.

Bentham's second condition was mutual disarmament. As directed against the maintenance of armaments by recognised and recognising nations from motives of mutual jealousy and distrust, his argument is impregnable; and there is much force in the special urgency with which he addresses it to his own countrymen. "Whatsoever nation," he says, "should get the start of the others in making the proposal to reduce, and fix the amount of its armed force, would crown itself with everlasting honour. The risk would be nothing, the gain certain. This gain would be, the giving an incontro-

vertible demonstration of its own disposition to peace, and of the opposite disposition in the other nation in case of its rejecting the proposal.

“The utmost fairness should be employed. The nation addressed should be invited to consider and point out whatever further securities it deemed necessary, and whatever further concessions it deemed just.

“The proposal should be made in the most public manner: it should be an address from nation to nation. This, at the same time that it conciliated the confidence of the nation addressed, would make it impracticable for the government of that nation to neglect it, or to stave it off by shifts and evasions. It would sound the heart of the nation addressed. It would discover its intentions and proclaim them to the world.”¹ Then he adds these remarkable words:—

“The moral feelings of a man in matters of national morality are still so far short of perfection, that in the scale of estimation justice has not yet gained the ascendancy over force. Yet this prejudice may, in a certain point of view, by accident, be rather favourable to this proposal than otherwise. Truth, and the object of this essay, bid me to say to my countrymen, it is for you to begin the reformation,—it is you that have been the greatest sinners. But the same considerations also lead me to say to them, you are the strongest among nations: though justice be not on your side, force is; and it is your force that has been the main cause of your injustice. If the measure of moral approbation had been brought to perfection, such position would have been

¹ Wheaton, *ut supra*, pp. 334, 335.

far from popular,—prudence would have dictated the keeping them out of sight, and the softening them down as much as possible.

“Humiliation would have been the effect produced by them on those to whom they appeared true, indignation on those to whom they appeared false. But, as I have observed, men have not yet learned to tune their feelings in unison with the voice of morality in these points. They feel more pride in being accounted strong than resentment at being called unjust; or rather, the imputation of injustice appears flattering rather than otherwise when coupled with the consideration of its cause. I feel it in my own experience; but if I, listed as I am as the professed, and hitherto the only advocate in my own country in the cause of justice, set a less value on justice than is its due, what can I expect from the general run of men?”¹ Bentham’s appreciation of the weaker side of human character comes out not less clearly in the following remark. “How, then,” he asks, “shall we concentrate the approbation of the people and obviate their prejudices?”

“One main object of the plan is to effectuate a reduction, and that a mighty one, in the contributions of the people. The amount of the reduction for each nation should be stipulated in the treaty; and even previous to the signature of it, laws for the purpose might be prepared in each nation, and presented to every other, ready to be enacted as soon as the treaty should be ratified in each State.

“By these means the mass of the people, the part most

¹ *Ul supra*, pp. 338, 339.

exposed to be led away by prejudices, would not be sooner apprised of the measure than they would feel the relief it brought them. They would see it was for their advantage it was calculated, and that it could not be calculated for any other purpose.”¹

Bentham's scheme of organisation embraces only the judicial element. “Establish a common tribunal, the necessity for war no longer follows from difference of opinion. Just or unjust, the decision of the arbiters will save the credit, the honour of the contending party.”²

He makes no adequate provision either for the legislative or the executive functions of the State. For both he is disposed to trust to the force of public opinion. “There might, perhaps, be no harm in regulating, as a last resource, the contingent to be furnished by the several States for enforcing the decrees of the Court. But the necessity for the employment of this resource would, in all human probability, be superseded for ever by having recourse to the much more simple and less burdensome expedient of introducing into the instrument by which such Court was instituted, a clause guaranteeing the liberty of the press in each State, in such sort, that the diet might find no obstacle to its giving, in every State, to its decrees, and to every paper whatever which it might think proper to sanction with its signature, the most extensive and unlimited circulation.”³ It is hard to see why Bentham, who had so low an opinion of international morality and disinterestedness, should have expected so much more from the

¹ Wheaton, *ut supra*, p. 340.

² *Ib.*, p. 339.

³ *Ib.*, pp. 342, 343.

action of opinion in international affairs than it yields in national affairs. He would himself have regarded as a visionary any man who proposed to dispense with a national executive; and it is not surprising that his proposal to dispense with an international executive should have been treated, even by so ardent an admirer as Mr Wheaton, as a "*rêve d'un homme de bien*." We must demur, however, when Mr Wheaton goes on to say: "This proposition of Bentham to abolish war for ever between the nations of Europe, is the more remarkable as it was prepared just before the breaking out of a war, the most destructive in its consequences, and attended with the most flagrant violations of the positive law of nations of any which has occurred in modern times."¹ If the inference which Mr Wheaton desires to draw from the coincidence be that Bentham's scheme failed to avert war, the reply is obvious: Bentham's scheme was not adopted; and though, what subsequently occurred may prove the folly of those who refused to listen to Bentham, it cannot prove Bentham's folly.

I have dwelt with pleasure on this almost forgotten treatise, because, from the shallowness of Bentham's philosophical system, there has been a tendency, both on the Continent and in Scotland, to attach less value to him than was his due as a practical law reformer; and this tendency has been increased by the indiscreet claims to originality which his English worshippers have so often advanced on his behalf. In advocating the compulsory registration of deeds, the institution of a public prosecutor of crimes, and the fusion of law and

¹ Wheaton, *ut supra*, p. 343.

equity, he was proposing as novelties what both Continentals and Scotchmen had practised for ages.

The efforts of the Peace Societies and of the various Peace Congresses which they have assembled from time to time have generally been limited to the subject of arbitration; and from Bentham's time to our own few attempts have been made to organise the body cosmopolitan, and to give continuous life to it. Of the important contribution which Dr Bluntschli made to the literature of the subject I shall have occasion to speak hereafter; and the only other work which appears to claim our attention in this place is the remarkable appeal which has just been made to the sovereigns of Europe "by one of themselves."¹

The work is conceived in a lofty and generous spirit, which, though no doubt mainly due to the personal qualities of the author, may in some measure be ascribed to that cosmopolitan character which, as I have elsewhere² indicated, belongs to those whose family relations necessarily carry their sympathies beyond the boundaries of the States to which they are politically attached. So long as the principle of hereditary monarchy is maintained, and royal marriages are limited to royal families, we shall have a class of persons who, other things being equal, are in a more favourable position for dealing with international questions than the citizens of separate States; and on this ground, an interest attaches to this work beyond any other of a similar kind since that which its author, rather too confidently, perhaps, ascribes to Henry IV. and Queen Elizabeth.³ I have

¹ *Mission Actuelle des Souverains. Par l'un d'eux.*

² Vol. i. p. 208.

³ He does not even mention Sully's name!

said " things being equal ; " and in the case of the royal families of Europe intermarriage does not appear to have produced either the physical or intellectual evils which are often traced to it in families in which hereditary disease exists. In both respects their members compare well with any corresponding number of persons taken from the best classes of subjects. Another circumstance which tells in their favour for this purpose is that they are still mostly bred to the profession of arms, and enjoy much popularity with the military class. Pacific proposals emanating from them are consequently less distasteful to soldiers than when they come from civilians ; and now that the career of personal ambition in the direction of territorial aggrandisement is for the most part shut against them, they have ceased to be specially susceptible to the war-fever by which, from time to time, we are all affected. Their brother-monarch tells them, truly, that, as matters now stand, there is no class whose interests are so much imperilled by war ; and their more thoughtful members can now scarcely fail to perceive that it is only by elevating international conceptions of morality in themselves and others, and thus contributing to bring international organisation up to the point which national organisation has reached, that they can hope again to be hailed with sincerity as benefactors to mankind. Here is the picture of their actual position, as their candid brother presents it to them :—

¹ " Aujourd'hui, plus nominaux que réels, les souverains ne sont que les gardiens d'une trêve armée qui ne leur permet pas les œuvres de la paix.

¹ P. 2.

"Conservation, destruction : tel est le dualisme qui limite brutalement la souveraineté, d'où toute réforme pourrait procéder.

"C'est un cercle fatal qui nous étreint, souverains et peuples, et que nous ne pouvons briser tous que par une sincère entente commune, préparée par un grand effort intellectuel et moral.

"Depuis le traité de Westphalie ou plutôt depuis le Congrès d'Arras, le gouvernement général de l'Europe est un véritable état de siège, dont nous sentons vainement l'écrasante inanité.

"Tant que ce système subsiste, aucune conception générale de gouvernement digne de nos temps n'est applicable, aucune action généreuse dans le sens des grands mobiles de la société, des grands intérêts de la civilisation, n'est pratique.

"Sujets de la force, notre seule politique possible est de nous en saisir, sous peine d'en être saisis ; et notre seule activité pratique est une compétition diplomatico-militaire, interdynamique et internationale, dont le triomphe toujours éphémère coûte aussi cher, à tous les points de vue que la défaite.

"Valois, Wasa, Bourbon, Hapsbourg, Orange, Romanoff, Hohenzollern, Bonaparte, etc., nous tendons à rééditer périodiquement la même histoire, sans grand profit pour nous-mêmes, ni pour l'Europe ; nous tournons dans le même manège, dans le même champ clos féodal, qu'ensanglantent nos ambitions rivales, nos combats judiciaires, donnant aux peuples le spectacle d'une rixe de gladiateurs qui leur prouve par de perpétuels exemples que l'anarchie préside à nos rapports comme aux leurs."

But it is not to princes alone but to peoples that the author appeals. He invokes public opinion as the motive-power

by which he hopes to bring into action the means at the disposal of rulers, hereditary and elective, and to put an end to the anarchy which he recognises as the condition of international existence in Europe, more especially since the Treaty of Westphalia in 1648. He charges that unhappy treaty with having formally inaugurated that system of mutual distrust which has placed every State in Europe in a position of perpetual siege, and he supports his indictment against the anti-social republic of States which it created, by a historical analysis, which he has worked out with great care and much minute knowledge. In describing the condition of England in the reign of Stephen, the Saxon chronicler says that it seemed as if Christ and His angels had forsaken the earth; and the present writer presents a similar picture of the state of Europe, as a whole, since the Treaty of Westphalia. Starting from the postulate, indisputable by theists, that all law, in the last analysis, is theocratic, he maintains that the public law of Europe gradually lost its theocratic character from the period when the Papacy became a temporal power; that it was finally secularised in 1648, and that from that period it has ceased to be divine altogether, and degenerated into mere arbitrary human caprice. To restore it to its moorings in the divine reason is the task of the future, and this divine reason is discoverable only through the teaching of Christ. Our author is careful to distinguish between *la religion* and *les cultes*; and though probably a Roman Catholic, his conceptions of Christianity are entirely free from sectarian or even Hebraic narrowness. It is in the direction of philosophy that the hand of the amateur becomes visible, and that the system exhibits

an immaturity which it is to be feared may prevent it from enlisting the sympathies of scientific jurists.¹ He fails to see that if there be but one God, there can be but one divine reason, one *λόγος* to reveal; and that to doubt the veracity of subjective revelation is a deeper form of scepticism than that with which any conceivable form of theological heresy can possibly be chargeable.

His definition of the Church, it is true, leaves nothing to be desired in the direction of liberality.

“J’entends par ce mot,² Église nationale, la totalité des corps enseignants de la nation, sans distinction de corps, de sciences, ni d’arts, depuis les universités laïques, les académies, les instituts et les écoles spéciales, jusqu’aux institutions de tous les cultes reconnus par la loi civile, la Franc-Maçonnerie y comprise, si elle se donne, soit pour un culte, soit pour une école humanitaire; depuis les sciences naturelles de la géologie à l’astronomie, et les sciences humaines de l’anthropologie, à la théologie comparée, jusqu’aux sciences divines de l’ontologie à la cosmogonie.

“Cette totalité des corps enseignants de chaque nation est ce que j’appelle l’Église nationale, et l’évêque national qui la consacrera dans sa patrie en sera le Primat catholique orthodoxe.”

Here is Coleridge’s clerisy in the fullest sense; but as “la métaphysique” is forbidden to them, the clerisy is to approach the absolute only through the avenue which is opened to them by the clergy, with the inevitable result of leaving conscience at the mercy of human interpreters of external revelation.

¹ P. 225.

² P. 396.

The proposal for the establishment of three great international councils — a Council of Communes, a Council of States, and a Council of Churches—with which the work concludes, is not sufficiently worked out to warrant the expression of a definite opinion regarding it. The first council being charged with the economical interests of States, the second council is intended to supply the three factors of legislation, jurisdiction, and execution, on which I have insisted; whilst the object of the third is to bring them into action under the guidance of those spiritual influences in which the divine and the human elements of our nature are united. But the organism thus to be called into existence is so entirely new that it could receive little support from the existing constitution of political society, and could with difficulty be brought to harmonise with it. To me it has always appeared that our problem is to project into international life the institutions of which we have had experience in national life; but the conditions offered for their realisation in the two cases are no doubt widely different, and as the scheme of the royal author does not appear, like so many of those I have noticed, to conflict with natural laws, or to be shut out by the assumption of impossibilities, I cannot venture to say that the law of nations might not be vindicated by its means more effectually than by schemes which cling closer to national experience. But be this as it may, there is a kingly and saintly tone pervading the whole work which contrasts nobly with the narrow utilitarianism and the vulgar materialism so prevalent at present.

CHAPTER VIII.

OF THE CAUSES OF FAILURE OF PREVIOUS ATTEMPTS TO SOLVE
THE ULTIMATE PROBLEM OF INTERNATIONAL LAW DIRECTLY.*1st, Of the absolute causes of failure.*

The absolute causes of failure of the schemes which I have enumerated have already been pretty fully indicated.

In aiming at finality of relations and equality of States, they violated laws of nature which are unchangeable. So far their object was mistaken, their realisation was impossible, and they belong to the category of proposals which I promised to eliminate on absolute grounds.

2d, Of the relative causes of failure.

(a) Want of connection between national and international legislation.

In so far as the objects contemplated by these schemes were limited to the continuous adaptation of law to fact, there was nothing extravagant, or even exceptional, in their end, however inadequate their means may have been.

Nor were the means which they proposed to bring into action necessarily inadequate. It is quite conceivable that a congress of plenipotentiaries, whether continuous or meeting at short intervals, might have succeeded in drawing up an international code, and in adapting it to changing circumstances; that an international tribunal might have applied it,

and that an international executive might have enforced it. Kant's expectation, that by such means, or any other, perpetual peace should be secured, was extravagant; but otherwise his proposals seem to have embraced the elements of their own possible realisation. But Kant, like all the other writers who have dealt seriously with this subject, lived under what may be called the old dispensation of diplomacy.

In his time, the identification of the will of the representative of the nation, with the will of the nation represented, was far less immediate than it has since become. If an ambassador was duly authenticated as the representative of the former, that he truly represented the latter also was an inference, the accuracy of which, in point of fact, was not doubted. The notion of a national will so asserting itself as that it should conflict with, and ultimately override that of the official representative of national sovereignty for the time being, was scarcely entertained. Out of England, indeed, it could scarcely have occurred; and if it had, there was no free press through which it could have obtained expression. Its occurrence, if it stopped short of positive rebellion, could scarcely have become known. In such circumstances, it is not surprising that a congress of ambassadors, or of so-called plenipotentiaries, should have been regarded as a congress of nations, and that neither Kant nor any one else should have dreamed of adopting any other means of pledging the national will. The nation, indeed, rarely heard of the transaction at all till its faith was plighted, and till any expression of separate will would have been a breach of national faith externally, and internally would have entailed

a revolution. But the course of events has entirely changed the relations of the governing and the governed classes in this respect. Even in non-constitutional countries—Russia, I believe, being no exception—the monarch no longer carries the national will in his pocket. In our own country, at all events, every act of the executive is watched by a ubiquitous press; and even its intentions are pried into and scanned by a public opinion, the judgment of which is swift, and its action irresistible. Of this we had a striking manifestation in the change of policy with reference to the Turkish empire, which the English nation, even during the Parliamentary vacation, forced on a reluctant Government and a recalcitrant Premier, after the Bulgarian atrocities in the summer of 1876. When the general election occurred in 1880, both the Premier and his Government, whose hands had been tied by public opinion during the intervening four years, were peremptorily dismissed.

In order to be trustworthy, then, international legislation in our day must be far more immediately the result of the will of the respective nations than was contemplated by the authors of the schemes which we have criticised; and in that view, I shall make provision, in that which I shall venture to propose, for the international legislative body being chosen by the legislative in place of the administrative departments of the national governments which they profess to represent.¹ In the hope of developing international interest and sympathy, I shall further propose that the members of the inter-

¹ In this proposal, as well as in repudiating the *status quo* and equality of States, I am glad to find that I have Dr Bluntschli's concurrence, *Der Plan Lorimer's, Kleine Schriften*, vol. ii. p. 292.

national government, in all its departments, should be greatly more numerous than was contemplated by any of my predecessors, or formerly by myself.¹

In speaking of the existing arrangement by which the conduct of international affairs is still intrusted entirely to the representatives of the executive, I said in my introductory lecture in 1876: "No popular outcry, it is true, has hitherto arisen against it beyond that undertone of dissatisfaction, always to be heard, with the mysterious and irresponsible manner in which foreign politics are conducted." Since that period the tide of feeling has continued to run strongly in the direction which I then indicated; and the very difficult questions involved in the relations between the Legislature and the representatives of the executive abroad, were brought out in the discussion of Mr Richard's motion "On the action of our representatives abroad," on 29th April 1881. On that occasion, however, our relations, as the great colonising empire, with semi-barbarians, or with small bodies of foreign immigrants like the Boers, were the prominent subjects of consideration, and much of Mr Gladstone's reply to Mr Richard had no application to the relations of recognised States *inter se*. But he made two remarks of very great importance which bear directly on our present subject: 1st, That the publicity which attends the proceedings of Parliament, in consequence of the increased action of the press, and the new action of the telegraph, limits its utility as a council

¹ In this Dr Bluntschli, who is afraid of weakening the monarchical element, disagrees with me. My object was to create an assembly in which reason might be better able to cope with arbitrary will, but Dr Bluntschli is entirely mistaken in imagining that I wished to create an "Europäische Gesammtrepublik."

to which the executive can resort for advice in the conduct of negotiations which cannot be published to the whole world at every stage ; and 2d, That the representatives of the people, and the people themselves, are often more impulsive than the executive, and that so far from the danger of rash and precipitate action being diminished, it would be increased by the executive being placed under the direct control of Parliament. " What you really want," he said, " is not merely the improvement of the machinery by which the central authority controls its extraneous agents, it is the improvement of the central authority itself—the formation of just habits of thought ; it is, that we should be more modest and less arrogant ; it is, that we should uniformly regard every other State, and every other people, as standing on the same level of right as ourselves." Alongside of these very weighty remarks, however, I think we must bear in mind that the chief obstacle to the formation of " just habits of thought " on international questions, is the secrecy which covers them, till, by assuming the character of *faits accomplis*, they have lost all practical interest for the public ; and that it is to ignorance of foreign affairs thus engendered that we must ascribe those alternations of indifference and passion which impel the most cultivated nations, like " dumb, driven cattle," to rush blindly into disastrous wars, and to maintain those still more disastrous warlike preparations which sap the resources and threaten the very existence of civilisation. If, in place of sending one plenipotentiary to determine the policy which it should adopt in accordance with the views of the executive department at home, each of the six great

Powers were to send, say twenty, and the smaller Powers a corresponding number of representatives of the national will, to discuss international politics annually, and bound itself by treaty to shape its policy in accordance with the results of their deliberations, as ascertained by a general vote, I believe that a means of international education, and an element of international conciliation, would be thereby called into activity, the importance of which it is scarcely possible to exaggerate.

(b) *Want of limitation of national forces.*

There is another condition of the success and stability of an international government, which I fear is of far more difficult, though not, certainly, of impossible realisation—I mean, a general treaty of proportional disarmament, to the extent of reducing the national forces of individual States to the limit requisite for national purposes. Without this it is obvious that any one of the greater States that was outvoted in the international legislature, might at any time break up the whole organisation. Such an occurrence might, of course, be obviated by the creation of a central force so extensive as to exceed that which any single force, or combination of forces, could possibly bring against it. The existence of such a force, however, even were its formation possible, from the danger which it would occasion to the internal liberty and consequent development of individual States, would probably prove a greater evil than even the existing national armies; and the notion of its necessity has, I am aware, appeared to many minds to offer an insuperable obstacle to all conceivable schemes for the formation of a self-vindicating international government. We

are thus driven to contemplate the possibility of proportional disarmament by means of voluntary arrangements between existing States.

CHAPTER IX.

OF PROPORTIONAL DISARMAMENT.

A general treaty for such proportionate and simultaneous reductions of armies and fleets as would leave the relative importance of existing States and the so-called balance of power unchanged, has all along been a favourite scheme of the Peace Society. It is a portion of their programme, in which the peace party do not stand alone, and which, if separated from the rest of it, would probably meet with far wider acceptance than has been extended to that programme as a whole. Mr Richard, in the very able paper on the subject which he read to the Association for the Reform and Codification of the Law of Nations, in 1879, quoted a passage from a speech by Sir Robert Peel, in which he pointed out, as clearly as has ever been done by Mr Richard himself, the futility, even for purposes of national defence, of the multiplication of national forces which has been proceeding at so prodigious a rate since his day. "Is not the time come," said Sir Robert, "when the powerful countries of Europe should reduce those military armaments which they have so sedulously raised? What is the advantage of one Power greatly increasing its army and navy? Does it not see

that if it possesses such increase for self-protection and defence, the other Powers will follow its example? The consequence of this state of things must be that no increase of *relative* strength will accrue to any one Power, but there must be a universal consumption of the resources of every country in military preparation. The true interest of Europe is to come to some common accord, so as to enable every country to reduce those military armaments which belong to a state of war, rather than of peace. I do wish that the councils of every country, or if the councils will not, that the public mind and voice would willingly propagate such a doctrine.”¹ Mr Richard further reminds us that, on the occasion of Mr Cobden’s motion in the House of Commons on the subject in 1851, Lord Palmerston expressed himself to the same effect; and that in 1859, Lord Beaconsfield exclaimed,—“Go to the Emperor of France, and say to him, ‘Prove by the diminution of your armaments that you are sincerely anxious for the peace of Europe, and the world, and we will join you in the spirit of reciprocal confidence. Let us terminate this disastrous system of wild expenditure, by mutually agreeing, with no hypocrisy, but in a manner and under circumstances which will admit of no doubt, by the reduction of armaments, that peace is really our policy.’”² Mr Richard and his friends of the Peace Society went to the Emperor of the French, but neither Lord Beaconsfield nor the English Government went along with them; and when, in 1863, the Emperor did actually propose a Congress of all the European States, with the view, amongst other things, of bringing about a reduction of

¹ *International Reduction of Armaments*, p. 8.

² *Ib.*, p. 9.

armaments, "It is known that this proposal for a Congress failed, principally through the opposition of England; though in the opinion of the late Lord Derby, 'If there was a country in all Europe that had less interest in sending a blank refusal to have anything to do with the Congress, it was England.'"¹

Such expressions of opinion as these, taken along with the widespread sympathy which Mr Richard's labours have evoked in France, and Belgium, and Italy, and even in Germany, seem to warrant the hope that the realisation of some scheme of mutual disarmament, more or less extensive, may lie in the not distant future. If the game of "beggar-my-neighbour," which is at present being played between France and Germany, is much longer persevered in, and the stream of emigration which it produces continues to flow so unequally, it is not improbable that Germany may find in such disarmament her last remaining weapon of defence. Sooner or later, a treaty of disarmament is certain to be negotiated, and whatsoever nation gets the start of the others in making the proposal to reduce, as Bentham said, "will crown itself with everlasting honour."² The real and permanent obstacle to international organisation seems to lie in the danger of rearmament. The moment that a *casus belli*, whether real or imaginary, presented itself to an individual State, no treaty, however solemnly negotiated, would restrain it from arming in its own behalf; and we know from the experience of the American Civil War, with what facility vast armies may be extemporised by peaceful communities. Unless a substitute for separate action

¹ *International Reduction of Armaments*, p. 10.

² *Ante*, p. 226.

can be found, separate action must continue; and it is for this reason that the questions of international disarmament and of international organisation appear to me to act and react on each other at every point and in every direction. They may be realised in conjunction but not separately. When such a scheme of international organisation has been devised as would afford to individual States a trustworthy guarantee that the honest objects for which standing armies are maintained beyond what is necessary for municipal purposes would be attained without them,—then, and not till then, honest States may be expected to contemplate their reduction.

What, then, are the honest objects for which civilised nations throw away their blood and treasure with so lavish a hand, and to what extent is their attainment possible by less costly means? These objects, as it seems to me, may be reduced to three,—national security; the civilisation of barbarous races under the guardianship of advanced nations; and the recognition by other nations of national progress already effected, even when such recognition implies a change in the relation between the more progressive nation and other nations, and a consequent shifting of the so-called balance of power. Let us consider these objects *seriatim*.

1st, *National security*.—Inasmuch as a *proportional* diminution of the forces of individual States would leave their *relative* forces unchanged, any international organisation which made them mutually responsible for each other's security against external violence would, in so far as it was operative, be *an addition* to the national guarantees which they receive

from their own forces. Should the international organisation break down, each State would be exactly in the *relative* position in which it was before; and, whilst it stood, the State would have two guarantees for its security in place of one. The risk of overthrow from a coalition of its enemies, from which even the greatest State is not free under existing circumstances, would, at any rate, be diminished. The exceptional strength of our navy, for example, would remain undiminished were all the navies of Europe reduced proportionally, whilst the protection which we derive from it would be increased in proportion to the diminution in the risk of maritime warfare which was effected by the existence of the international government. With a navy a tenth part of the size of that which we at present maintain, relatively we should be as much in a condition as ever to fight, whilst the chances of our being called upon to fight would be less than they now are. Small States, again, would not be in the continual danger of absorption which they are at present. In their case self-defence is always impossible; and to them the new guarantee could scarcely fail to be an important addition to the love and favour—I fear we must rather say to the mutual jealousies—of the greater States on which their present existence depends. In conjunction with a scheme of international organisation, then, no valid objection to the experiment of such a diminution of national forces as to render international organisation possible could, as it seems, be reasonably urged in behalf of national security.

2d, *The government and civilisation of barbarous or semi-barbarous communities.*—This being in reality a municipal

object, the force *requisite* for its attainment need excite no jealousy in other nations, and would therefore be left undiminished. A difficulty would no doubt arise as to the force requisite for this purpose. The Russian army in Asia, or the English army in India, might be so increased as to endanger the peace of Europe. The only check on this would consist in the obligation on the part of the nation to account to the international legislature for any addition which it might find it necessary to make to its forces, and in the competence of the international government, by attacking its European possessions, to counteract its efforts to develop an aggressive army under false pretences. Russia in Europe would thus be a hostage for the conduct of Russia in Central Asia, and Great Britain in Europe would be a hostage for Great Britain in India.

3d, *The international recognition of national progress.*—The third object for the attainment of which national forces in excess of those requisite for municipal purposes may be honestly maintained—viz., the assertion *de jure* of a higher relative position already attained *de facto*, is that of which the attainment by the action of an international government seems most difficult. How is the fact of an increase of power on the part of an individual State to be proved, unless it asserts itself? And how is it to assert itself except by arms? The question, at first sight, seems insoluble; and yet, if not identical with, it is strictly analogous to, that which is daily solved within the borders of the State. One man outstrips another who was his equal, or his superior, when they started in the race of life, takes possession of the land which he

inherited, and the house in which he was born; and so far from having been his enemy at any period of his career, has probably been his good Samaritan on more occasions than any other individual whatever. So far from resisting the change of circumstances, there probably was not a single step in the process which did not take place at the suggestion of the unsuccessful man, and for which he did not feel himself to have been the debtor of the man who supplanted him. Now, how was this accomplished? Let us analyse the process, and try if we can discover why the wheels of change which revolve so beneficially within the State should seem to be attached to a Juggernaut's car the moment they pass its limits. The first observation which we make, and it is a hopeful one, is that within the State it was not always so. In the earlier stages of civilisation every change, whether of property or position, was brought about by the direct action of physical or material force. The strong subdued the weak by violence, just as one State subdues another in our own day. Did the strong, then, cease to subdue the weak as civilisation advanced? Far from it. He did it more surely and effectually than before, the only difference being that he did it peaceably, with the consent, the approval, and in many cases, as I have said, with the gratitude of the weak himself.

The element, then, which civilisation contributed has been the means, not of arresting change, but of facilitating change—of giving freer scope than before to the upward and downward action of social forces—of recognising new relations *de jure* the moment they manifested themselves *de facto*. By what means, then, did civilisation succeed in oiling the wheels

of change? The first answer to this question is that civilisation furnished a measure of value, by an appeal to which the relative power of opposing forces could be ascertained, without bringing them into collision. Physical resources were measured by money; intellectual and moral resources were measured by subtler and more varied, but still by recognised and acknowledged tests; and all that municipal law did was to see that the results of these tests were duly recognised by preserving fair and open markets. The function of municipal law, as has come more and more to be seen, is to leave the *de facto* element of value, to be determined by the free action of the *de facto* element of power, and simply to register and vindicate the result. It ascertains who is the highest bidder, whether in money or in brains, and asserts his position for him.

This done, he has no interest to retain in his hands the means of self-assertion; and his standing army of retainers, which he maintained in a ruder society, is disbanded.

Now, if we can see our way to the individual State receiving the same assurance that the new position which it has won *de facto* shall be vindicated for it *de jure*, by international organisation, which the individual citizen has that his new position will be vindicated for him by national organisation, then international organisation and even a treaty for proportional disarmament will become hopeful. The task is not easy, but national organisation was not developed in a day; and there are grounds on which we can see that international organisation may possibly have to draw on a future almost as unlimited as the past.

The weapon with which men fight within the State, as we

have seen, is money. Silver and gold, as representatives of power in every organised community, have taken the place of powder and shot,—the latter being kept in reserve only to secure the action of the former, just as bullion is kept in a bank, as a guarantee for the value of the paper money which it issues.

The two armies by which these weapons are wielded assume the peaceful and prosaic character of lenders and borrowers, buyers and sellers. The lenders and buyers are the victors, the borrowers and sellers are the vanquished; and bankruptcy, with its consequent *cessio bonorum*, is final defeat, annihilation, and the surrender of recognition, as an individual unit of value. When we speak of the bankrupt as no longer the slave of his creditor, we do little more than testify our aversion "to call a spade a spade." As concerns his goods, at all events, the analogy between his position and that of a conquered province can escape no one. Now all this takes place without any resort to force on the victor's part. If force is called for, it is the State that wields it, not the citizen. The fact that the State possesses it, supersedes the necessity for its use; for the inevitable character of the laws of trade is too obvious to permit an individual citizen to hope for the sympathy of his fellow-citizens in any attempt he might make to set them at defiance.¹

¹ Commercial preponderance is measured by money more accurately than any other form of preponderance, and it is the only form of preponderance which asserts itself peaceably, even when it draws political preponderance after it. The preponderance of English shipping and trade on the Congo, for example, is probably inevitable; and if so, there is every reason to hope that, when it comes, it and its consequences will be accepted by the other Powers as the results of a

And what is true of the action of money is equally true of the action of brain and muscle, when ascertained and recognised as measures of value. The claims of a strong head or a strong arm find means of vindication without violence in every organised community. The battle of life is fought as peacefully at the examination-table, in the press, at the bar, in the senate, as in the counting-house.

Force has its way without a blow; and arguments do not require to be loaded with threats.

Do the analogies, then, which we have detected between competition and rivalry within the State and international aggression, indicate any analogous arrangement by which the peaceful action which takes place in the one sphere may be realised in the other?

States, like their citizens, borrow money beyond the amount on which they are able to pay the interest which they have promised, and sink deeper and deeper into debt, till their liabilities exceed the securities which they have to offer, and they become bankrupt. Is it inconceivable that, in place of being left like carrion, to be contended for by birds of prey, an international trustee should be appointed for the realisation and distribution of their remaining assets? The vastly greater magnitude of international transactions does not seem to exclude the action of factors analogous to those by which national transactions are effected, provided the factors can be correspondingly magnified, so that the motive power shall conform to law of nature. But if England were to claim political preponderance directly, even as a basis for her future commercial development, the validity of that claim could be tested and measured only by force, and all the nations of Europe would go to war with her rather than concede it.

tinue to hold the same relation to the weight. Measures of value may be more difficult to discover in the former case than in the latter ; but where the same measure applies, as in the case of fraudulent bankruptcy, an international trustee may apply them, just as they are applied by a municipal trustee, provided the power at his command be equally irresistible. Every one has been saying of late that a couple of experienced Indian residents, *if adequately supported*, could very soon regulate the finances of Turkey and of Egypt, so as not only to pay their creditors, but to render them solvent for the future. That the cause of honesty and wellbeing would be vastly promoted by such an arrangement is unquestionable ; but by what power are the residents to be protected against the international jealousies by which their efforts are at present defeated ?

That no individual State is entitled to assume the responsibility is obvious ; and we are again driven to invoke the aid of an international government as the only conceivable solution. Even when the transference of territorial sovereignty has become inevitable, a peaceful arrangement of the transaction might probably be effected by an international government, sufficiently powerful to enforce a sale, to determine the price or equivalent, and to grant an international title. Such a proceeding would be closely analogous to a forced sale of private property, under an Act of Parliament, for a public purpose. Even private wealth and enterprise might thus be taken advantage of for the peaceful solution of international problems. The sale of Palestine to Sir Moses Montefiore might have been effected in this manner ; and the energies of the Duke of

Sutherland might be brought to bear on Crete or Cyprus. I mention these possible arrangements merely as illustrations of the manner in which, by tracing out the analogies between international and municipal transactions, the means which have been found efficacious in the more advanced, may be called into play, more or less directly, in the less advanced system of positive law. The illustrations may seem fanciful, but it cannot, I think, be doubted that in some of the directions which they indicate, the *de facto* principle, which lies at the root of international law, as of all other branches of jurisprudence, might find expression by means of an international executive, without calling for the action of national forces.

How the changes which must take place in the relative position of the greater States *de facto* are to receive recognition *de jure*, without asserting themselves by national armaments, and ultimately by war, is a problem which certainly admits only of partial and gradual solution. That any international organism which we can at present imagine should be strong enough or wise enough to determine the relations between such States as Germany and France, or Russia and England, is scarcely conceivable. Still, I cannot but think that the stronger State would, as a rule, be willing, in the first instance, to exhibit its strength in debate; and that there would be an ever-increasing tendency to accept the ultimate vote of a dignified body which thoroughly represented European opinion, as an indication of the probable result of alliances and hostilities. The necessity, moreover, of either responding or declining to respond to interpellations publicly addressed to the representatives of individual States would give an openness and honesty

to international dealings, the absence of which is gravely felt in the diplomacy even of modern times. Even in constitutional countries it is possible to give a reply to a question relating to international politics, which would not be accepted by an international assembly. The existence of a legislative assembly, really representative of international opinion, by diminishing the risk of surprises, would thus have the effect of obviating the necessity for maintaining those ruinous national armaments which at present are kept up, by many States, mainly as precautionary measures. To suppose that by any means we can put an end to all international jealousies and suspicions would be to suppose that we could change the nature of man. But to suppose that the tendency of open discussion would be to diminish those jealousies and suspicions, is only to look for a result in international affairs with which we are familiar in human affairs in every other direction. It is in order to secure this result by giving to individual nations the feeling that, by contributing to this opinion, they really influenced the deliberations of the assembly which they obeyed, that I have dwelt on the necessity of giving to this assembly a really representative character, by bringing it into relation with the legislative departments of national governments. As there are different parties within States, so there must be different representatives of these parties in the international assembly, if their opinions are there to find expression. It might very well happen that the national minority might find itself in the majority in the international assembly; and where the national assembly had been elected without reference to international questions which subsequently arose, the inter-

national, not the national assembly, might represent the national sentiment. This result would not be attained, as it now appears to me, by my previous proposal¹ that the nominees of the executive should have votes assigned to them in proportion to the power of the States which they represented.

In this case all the votes of the nation would, of course, be given in one direction; and I do not think that they would be regarded either by the State itself or by other States as an equally accurate exponent of its views. When there is a great division of opinion, as there was in England on the Eastern question in 1877, no representation of the executive, however complete, would be a representation of the national will. On such a subject as this only a Parliament elected *ad hoc*, or, at any rate, with reference to international affairs, could give the requisite guarantees. To unequal voting, moreover, an objection wholly irrational, no doubt, but not on that account by any means to be overlooked, has, since the French Revolution, everywhere taken possession of the mind of Europe. Though nothing entitled to be called argument ever was brought against it, it was found to be impossible to introduce a graduated suffrage into our own electoral system when our last Reform Bill was passed; and it has not been thought possible to propose it in France, even by those who were themselves convinced of its justice and alive to its importance. Democratic susceptibilities demand that something which looks like absolute mathematical equality shall appear on the sur-

¹ "Le Congrès International, basé sur le principe *de facto*."—*Revue de Droit International*, 1870.

face, whatever means may be employed in the background to bring it into accordance with the real facts of the case.¹

What I should propose, then, in the present instance, would be that all the members of the international assembly should vote equally, each State sending a number of representatives as nearly as possible corresponding to its real power. An assembly thus constituted would, I think, elicit a measure of popular confidence which could not be hoped for in the case of a congress of plenipotentiaries, however accurately their voting power might be adjusted to the value of the States which they represented. In intrusting to them the duty of "voting the supplies," we should, moreover, be adhering to the analogy of municipal government more closely than if we placed it in the hands of representatives of the executive departments in the various States.

¹ I have explained the distinction between absolute and relative equality, in general, very fully in the *Institutes of Law* (p. 375 *et seq.*, second edition), and pointed out its importance in international law in the first volume of this work (p. 168 *et seq.*) My learned colleague, M. de Martens, appears (*Droit International*, vol. i. p. 381) scarcely to have apprehended my position, and to have supposed that, somehow or other, I objected to or limited equality before the law. I do not suppose there is any real difference of opinion between us, but in order to remove the possibility of misconception, I shall repeat once more what I have said so often. All States are equally entitled to be recognised as States, on the simple ground that they are States; but all States are not entitled to be recognised as equal States, simply because they are not equal States. Russia and Roumania are equally entitled to be recognised as States, but they are not entitled to be recognised as equal States. Any attempt to depart from this principle, whatever be the sphere of jurisprudence with which we are occupied, leads not to the vindication but to the violation of equality before the law.

CHAPTER X.

WANT OF AN INTERNATIONAL NATION.

How, I shall probably continue to be asked, as Dr Bluntschli¹ has asked me, can there be an international government, when there is no international people to govern? How can there be an international legislature, judicature, and executive, when there is not a single international man? To this objection the answer is obvious. If there is not an international man, neither is there a national man. So long as there are two nations in the world, every citizen of each of them must *eo ipso* be an international man, and cannot *eo ipso* be only an international man. In order that he may be either national or international, he must be both; and must be governed, or must govern himself, in both capacities. If there were an international population, in the sense of persons who belonged to no existing nation, they would form another nation, which would either become a claimant for international recognition, or else would remain outside the sphere of internationality altogether. Denationalised internationality is as much a contradiction in terms as denationalised nationality. An international government, as such, can consequently be in no other hands than those of the representatives of separate nations. To cosmopolitans, if we had them, its object would be un-

¹ *Kleine Schriften*, p. 293

intelligible. It was for this reason that the Romans had no international law.

But the difficulty is not got rid of by this negative answer. Though international functions cannot be performed, except by nationals and for nationals, it does not follow that they can be performed by them or for them. An international government may be impossible, on the ground that as international duties and interests are inseparable from national duties and interests, international government may be inseparable from national government. To this, again, the answer is, that separate national government is not found to be impossible on the ground that national duties and interests are inseparable from international duties and interests. If the impossibility of isolation does not exclude separate national organisations, why should it exclude a separate international organisation? If intercourse be inevitable, and there be no separate international agencies, it must be possible to such joint agencies as national and international life supply. In proposing that separate international functions should be intrusted to an international body composed of national elements, we are conforming, moreover, to existing arrangements, and in so far the question is solved for us already. The diplomatists who conduct the everyday intercourse of States, and who, on special occasions, meet in congresses and conferences, are neither more nor less national than the members of the international government which we seek to establish. That the international agents whom we desiderate would represent the legislative as well as the executive departments of States, whilst existing diplomatists represent only the executive departments of States, makes no difference in this respect.

Farther, one of the most important and valuable results which we should anticipate from the establishment of a separate international government, would be the training of a class of officials in each State devoted to international affairs, and capable of regarding them apart from national prejudices and those traditions of exclusive self-interest which are often dignified with the name of patriotism. International politics is a branch of political activity which, except to the very limited extent to which it is overtaken by diplomatists, has hitherto been intrusted to occasional volunteers from the national ranks. No one has embraced it as the business of his life. Under the arrangement which we propose, the cosmopolitan service would become the most ambitious career in which young men of talent could engage; it would appeal to the imagination far beyond either diplomacy or the Indian civil service, and would speedily be embraced by those who were most gifted by nature and most favoured by fortune. Moreover, as the diminution of warlike expenditure would provide means for renumerating international officials on the most liberal scale, there can be little doubt that its judicial as well as its political appointments would be eagerly sought after, and would attract the highest ability. That the scheme, if once understood, would be embraced with enthusiasm by the members of the legal profession everywhere, is an anticipation for the realisation of which we have to look no higher than to their sense of self-interest. It is not a new nation but a new profession that we want, corresponding to the new interests and duties which result from the recognition of the interdependence of States. So far one can see one's way.

CHAPTER XI.

WANT OF AN INTERNATIONAL LOCALITY.

By way of obviating this difficulty¹ I formerly suggested that Constantinople, which, in consequence of the political incapacity of the Turks and other historical causes, had become *res nullius gentis*, should be declared to be *res omnium gentium*—the *commune forum* of nations, and the centre of international life. Since this suggestion was made, the national claims of Greece have come more prominently into view, and there now seems to be a possibility of this branch of the Eastern question receiving a solution which would not have the effect of giving a preponderating position to any one of the great Powers. Believing, as I do, that the progress of humanity, and the cause of international organisation, as one of the main factors of that progress, demand a wider and more equal distribution of international power than at present exists, I have rejoiced at the political resuscitation of Italy, and shall rejoice still more should Greece and Spain succeed in reasserting their position as first-rate Powers.

But even if the national aspirations of the Greeks should receive the fullest realisation which the ethnological conditions of Eastern Europe and Western Asia render possible, would it not be still a question whether nature and history have not

¹ "Denationalisation of Constantinople, and its devotion to international purposes."—*Introductory Lecture*, 1876-77.

pointed out for Constantinople and its immediate surroundings another destiny than that of becoming the capital of Greece and the centre of Greek nationality? If we put aside the resurrection of the Eastern Empire in Greek hands as a project which is finally excluded by the growth of the Slavonic element, would not Athens fully serve the purposes of a capital to any separate Greek kingdom which could possibly arise? Would it not continue to be true that the cosmopolitan character which nature seems to have stamped on Constantinople has assigned to her a function which must continue to be unique? The key of Europe to Asia, and of Asia to Europe, always strong, and by modern appliances capable of being rendered wellnigh impregnable, whether by land or by sea, its possession by a strong Power would be a menace to the freedom both of the East and of the West; whilst, in the hands of a weak Power, as Greece, to all appearance must continue to be, the possibility of its seizure by a *coup-de-main* must render it a perpetual source of international distrust. If we add to these considerations the extraordinary mixture of races by which it is inhabited, and the vehement antipathies which hold them asunder, the possibility of its ever assuming a national character seems permanently excluded. The wretchedness of its present condition is a matter of universal admission, and yet, unless a *rôle* can be found for it, new as yet in the history of nations, that condition must remain substantially unchanged. On these grounds it appears to me that the difficulty which Dr Bluntschli sees in maintaining a denationalised centre of international life is pretty fairly balanced, in the case of Constantinople, by the still greater difficulty of nationalising

it, and that this coveted object can be utilised by civilised mankind only by its being devoted to their common use. Turks, Greeks, and Slavonians, Armenians, and Jews, might all preserve their respective nationalities under a government which belonged to all nations and to none.

But the question of the possibility of international organisation is not involved in the acceptance of this suggestion. Should its novelty render it too startling to be entertained by minds unaccustomed as yet to jural conceptions which transcend the sphere of nationality, Dr Bluntschli's proposal that the international body should be peripatetic amongst the lesser capitals of Europe might be adopted. It would scarcely have the advantage of securing impartiality, but the risk to the cosmopolitan body which might arise from bringing it in contact with the complications of oriental politics would be avoided. On the other hand, the expense and labour and loss of time that would be involved in transporting and finding accommodation for the permanent staff and material appliances requisite for an international organisation of any adequate importance, from place to place, are impediments which such continual changes would throw in the way of its development as a permanent institution. Whilst the international ark continued to "dwell in tents," the proverb that "a rolling stone gathers no moss," I fear, would be found to apply to it. An international nation, as I have said, is a contradiction in terms; but international life in a material world must diffuse itself from an international centre, where, without disturbance from national elements, it is permitted to breathe an international atmosphere. It appears to me that those who propose

that the international body should transfer itself annually from place to place, scarcely realise the magnitude and importance which any institution that is to deal with the major interests of nations must of necessity assume. They have still in their minds occasional diplomatic congresses for determining the results of wars, or courts of arbitration, like that which assembled at Geneva in 1873, to tax an account between England and the United States of America which England had already agreed to pay. An institution of far greater weight and dignity is obviously indispensable if the positive law of nations is ever to rest on a secure international basis, and I cannot see how such an institution could dispense with a permanent local habitation. If Constantinople cannot be secured for it, the most suitable place would probably be the Canton of Geneva, which, with great benefit to its local interests and to those of the Swiss Confederation, might be devoted to an object which would render it, in a sense, the centre of European life. One of the leading objects to be kept in view is to relieve the international body from the strain resulting from the political life of the great capitals, and in no way could this be better effected than by the selection of Geneva, which would become, as it were, a centre of decentralisation.

CHAPTER XII.

WANT OF AN INTERNATIONAL LANGUAGE.

Though belonging, like that which we have just discussed, to the minor difficulties of the problem of international organisation, the want of an international language must be recognised as an outstanding difficulty. French has an unquestionable advantage, both from its clearness and perspicacity, and from the fact that for nearly a century it has been the recognised language of diplomacy. As matters stand, it is the only language which almost all cultivated Europeans speak, better or worse; and on this ground I believe it would assert itself practically, as the organ of intercommunication amongst the members of an international government, as it does in the Institute of International Law, and other mixed assemblies. Though causing no serious inconvenience, there can, however, be no doubt that its use gives very considerable advantages in debate to native Frenchmen, and for this reason Dr Bluntschli's proposal of making the use of German and English, to which I would add Italian, optional, deserves consideration. If America should take part in the international confederation, and it should come ultimately to embrace those of our own colonies that are growing up into States with a rapidity unexampled in history, the claims of English to rank *pari passu* with French may become very strong. The tide of emigration

sweeps so many Continentals into the great Western Republic, that there must be thousands of men, of German or Scandinavian birth more especially, who, in their maturity, know no tongue but English. Latin, the only dead language generally taught, has claims to consideration on the ground of impartiality which can belong to no living tongue. But, though it was the language of diplomacy down to the period of the French Revolution,¹ and was used in the Œcumenical Council in Rome so recently as in 1869-70, its revival as a spoken language available for international purposes would now be a matter of much difficulty. It might be greatly facilitated, however, by the publication of Latin newspapers, which, if conducted with ability, would still enjoy a cosmopolitan circulation amongst the upper classes, and this circulation would gradually extend itself. The arrangement would have the collateral advantage of saving Latin from being abandoned as a branch of general education, an occurrence which, in my opinion, would be unfortunate, and of which there is manifestly much danger. But the revival of Latin would be a work of time, and would add to the difficulties of a problem already more than sufficiently difficult. On the whole, our decision, I believe, must be in favour of French, with the optional use of the other modern languages.

¹ In 1790 the Emperor Leopold II. complained to Louis XVI. of a despatch, on the ground that it was not written in Latin.

CHAPTER XIII.

JEALOUSY OF AN INTERNATIONAL EXECUTIVE BY THE
GREATER POWERS.

It is in the international executive that the great practical difficulties of every scheme of international organisation culminate; and it is at this point that the scheme proposed by my learned friend and colleague, Dr Bluntschli, separates itself from that which I ventured to submit to his criticism, and to that of my other colleagues of the Institute in the *Revue de Droit International* in 1877. It is, consequently, necessary that I should now bring Dr Bluntschli's important contribution to the literature of this branch of the subject under the notice of my readers.

Dr Bluntschli is at one with all his predecessors in recognising the necessity of creating a jural organism within the sphere of the international relations, and he concurs with me in believing that this may be accomplished by means of factors analogous to those by which it has been accomplished within the spheres of the citizen and personal relations. With me he repudiates finality and equality as anti-jural aspirations, and conforms to the teaching of the age by bringing his international legislature into direct contact with the national legislatures of separate States, in place of making it simply the mouthpiece of national executives. In other directions, how-

ever, traces of a suspicion of the popular element are discernible; whilst his anxiety to spare the susceptibilities of "militarism" has robbed his executive almost wholly of an international character.

The title which Dr Bluntschli has given to his scheme is *Europe as a Confederation* (*Europa als Staatenbund*), and this, in his opinion, marks its near relationship to the original scheme of Henry IV. and his minister, and distinguishes it from all the others, my own included. These schemes, Dr Bluntschli contends, all resolve themselves into proposals for the establishment either of universal monarchies or universal republics; and he objects to them on the ground that the "fundamental condition of the solution of the problem of European organisation is the preservation of the independence and freedom of the confederated States." Now, in so far as this proposition is a protest in favour of the freedom of each separate State to realise its separate destiny, I am altogether at one with him. The very definition of the object of international law with which I set out—"the realisation of the freedom of separate nations"¹—is evidence enough of the truth of this assertion. National freedom I regard as the object of international law, just as personal freedom is the object of national law, and as freedom is the object of law altogether. But national freedom, like creaturely freedom in general, is realisable only under certain conditions. Nations, like men, must be contented to exclaim, "*Idcirco omnes servi sumus ut liberi esse possimus*," and to accept the reciprocal recognition of each other's freedom as the condition *sine qua non* of

¹ *Ante*, vol. i. pp. 2 and 3.

the realisation of their own. It is failure to keep the fundamentally opposite, though complementary, conceptions of freedom and independence apart, which, I venture to think, has led Dr Bluntschli to cling in this instance to that "unchartered freedom" which has cost humanity so dear, and to struggle against those very bonds of union between States which no man of his generation has done so much to strengthen. Dr Bluntschli's patriotism is as ardent as his international aspirations; but he can scarcely imagine that the separate freedom of the great empire to which he belongs is promoted by an independence which she is forced to purchase by a material expenditure so vast that, if sufficiently prolonged, it must deprive her even of the means of self-defence against any richer rival, or by a continuance of that devotion to material cares which has already robbed her of the spiritual hegemony she enjoyed thirty years ago.

But it by no means follows from these observations that the establishment of an international bond of union which shall enable civilised States to frame and administer laws for the realisation of their separate freedom, may not be more practicable by means of a confederation of the looser kind proposed by Dr Bluntschli, than by means of a self-vindicating international government, though existing for exclusively international purposes. Much of Dr Bluntschli's objection probably arises from the impression that authors of previous schemes contemplated interference with national politics in the democratic sense, corresponding to that in the monarchical and dynastic sense which was contemplated by the Holy Alliance. It must be on this ground that he says such schemes would

involve the "republicanisirung Europas." Now nothing was further from my own intention, at any rate, than that any change should be made on the internal government of any nation; and I see no inconsistency in the establishment of an international republic for purely international purposes, by States not one of which is itself, or is willing to become, a republic. The idea of an executive, the functions of which should be exclusively international, was, I believe, first formally enunciated by myself, and my object was to keep the international government apart from national governments, in this, as in all other respects. In order that the international government may act as the guardian of the freedom of all national governments, and of all national governments equally, it must enjoy a separate freedom of its own; and this, as it seems to me, it can do only by means of a separate executive.

I was fully alive to the fact that the chief obstacle to the realisation of this idea would be found to lie in the menace to national freedom which it would be supposed to involve. I anticipated Dr Bluntschli's objection, and I am by no means insensible to its weight. I am willing to admit that there would be a real risk in the direction which he indicates,—a risk, viz., of an international executive, however guarded might be the conditions of its appointment, interfering with national affairs; and it was for the purpose of diminishing this risk that I proposed that the head of the whole confederation, as well as the chief of the executive, should be elected by the international legislature,—whereas, in accordance with Dr Bluntschli's scheme, these two great officers must inevitably be the representatives of the most powerful military nation

for the time being—the Bismarck and Moltke of the day. Dr Bluntschli is of opinion that a formal head to the international executive, and apparently even an international executive itself, may be dispensed with, and that the functions attributed to it in national governments may, in this case, be intrusted to a committee, or *collegium*, of the great Powers, when called upon to act by a certain majority of the legislative body. It is quite possible that this proposal of an executive committee may reach, or even transcend, any solution of the problem that is at present realisable; but inasmuch as this committee, like other committees, must have its “chairman,” it appears to me that it hides the practical difficulties arising out of the existence of a single executive head rather than removes them. When looked at from the theoretical side, again, it communicates to the whole international organism an unhappy resemblance to an arch without a key-stone. It is only in the event of a rupture between two or more of the great national Powers that international questions of what Dr Bluntschli calls the greater politics,—questions, that is to say, involving peace or war on a great scale, arise; and it is these very questions that he proposes to hand over to them. The smaller Powers, in such circumstances, might be pretty confidently expected to adhere to the central executive, and to follow its lead; and the only hope of peaceful action would probably consist in the pressure which they, in conjunction with such of the great Powers as remained loyal, were able to exert. For the central executive and the smaller Powers to retire from the scene on all great occasions, and to intrust the solution of international questions to the great Powers exclusively, is simply to aban-

don the international factor altogether. It is to go back to the "European Concert," which is held together by no permanent bond of union, and acts, if at all, only after the event. A separate central executive may be a rope of sand, but the "European Concert" is a handful of sand, and though its advantage may be but in form, I must still prefer the rope. The conception, the ideal, which we aim at, ought surely to be adequate to the functions we assign to it; and an organism possessing a legislature and a judicature, but which is to trust for its executive to chances of agreement of which history furnishes no examples, seems scarcely to possess this character. An international executive powerful enough to dominate the national forces which might at present be brought against it, is of course an extravagant conception; but on the hypothesis of proportional disarmament, there seems nothing unreasonable in the assumption that, with the support which it would obtain from the loyal members of the confederation, such a force might succeed in turning the balance in favour of an international policy against any exceptional or separatist national policy. In the event of a war, its chances of success would, at any rate, be better than those of any single State, or even of any national coalition that could be opposed to it.

Dr Bluntschli¹ imputes to me the desire to form a universal republic (*Gesammt-Republik*). So far is this from being the case, that it is on the ground of the exceptional position which I claim for the international body that, in speaking of it, I have eschewed the recognised political nomenclature altogether, and in place of calling it a monarchy, a republic, or

¹ *Kleine Schriften*, p. 294.

even a confederation, have used such indefinite expressions as a government, or an organism, for international purposes. Probably the closest existing parallel to the functions which it would be called upon to discharge will be found in those assigned to the "Delegations" by the constitution of the Austro-Hungarian empire—the international executive corresponding to the central Ministry of War. In this exceptional character I see the farther advantage, that the conflict between the centrifugal and centripetal forces, which I have elsewhere pointed out as the source of weakness inherent in composite States, could scarcely arise in a body which neither possessed the characteristics nor aimed at the objects of State existence. Neither the growth of new nor the revival of old nationalities would pull it asunder, whilst the barriers of race and language which keep old nationalities apart would defy all tendency to political unification. Far from obliterating, its tendency would be to protect and give freer scope to those ethnical peculiarities of the claims of which to international recognition I have elsewhere spoken,¹ whilst their anti-national action would add to its strength. Its danger would, no doubt, consist in its being shattered by coming in contact with some vast aggressive nationality which was striving for universal dominion. But this danger would diminish as time rolled on. A spirit of mutual concession would be gradually evoked by the new conceptions of reciprocal duty and interest, to which closer international relations would give rise. Every year would add to the stability of the institutions resulting from this spirit. A dignified and powerful class of international officials, what I have

¹ *Ante*, vol. ii. p. 93.

called an international profession, interested in their preservation, would spring up. The prodigious relief from taxation which would be the immediate consequence of the diminution of national forces would alone offer an important guarantee for the permanence of the new arrangement. New forms of expenditure would arise. Vast schemes of colonisation, exploration, irrigation, intercommunication, and the like, would be undertaken. Architectural structures, both sacred and secular, of prodigious magnitude and grandeur would be raised. Scientific and educational institutions would be established on a scale hitherto unimagined, and new forms of enjoyment would be discovered. New vices as well as new virtues would, no doubt, grow up; but the life of humanity would, at any rate, take a fresh departure which all of us who are not pessimists must believe would be in an upward direction. New tasks would await new generations, but the wearisome, wasteful, and now almost mechanical task of mutual destruction would fall into disrepute. In such circumstances, the possibility of reproducing national forces, on the scale to which nations are at present accustomed would gradually slip away. For a time we should, no doubt, have panics and relapses into partial re-armaments; but I believe there is no prediction that may be made with greater safety than that, if national forces were once reduced to the limit required for the preservation of national order, that step would be irrevocable. The constitution of such forces as the preservation of international order might demand need then be a matter of no great anxiety; and as the function of their commander would exclude him from all objects of national ambi-

tion, his nationality need occasion no jealousy. As representing a body which had no national existence, his position would be substantially that of a superintendent of international police.

That the military class would contend vehemently against arrangements which would so greatly reduce the importance of their profession is a matter of course, and the influence which they still possess in the leading States of Europe is, beyond all question, the most formidable practical difficulty that stands in the way both of national development and international organisation.

To their opposition would be added that of the old school of diplomatists. But when we remark the enlightened and liberal conception of his calling which was entertained, even in extreme old age, by the proudest of them all, Lord Stratford de Redcliffe,¹ we may hope that their opposition would not be very persistent. Formalists will always be obstructives; but the men of mark who fill the more important diplomatic appointments would find a worthier and more fruitful occupation as members and officials of an international government, and to them I feel persuaded that its establishment would become an object of absorbing interest, so soon as they understood what was really meant by it. It is by men of this class, acting under the guidance of the sovereigns and foreign ministers of the States which they serve, that a practical scheme of international organisation can alone be elaborated; and if I venture to reproduce, with some modifications, my previous suggestions, I beg my readers to regard them simply as illustrations of the principles which I have endeavoured to evolve from a scientific point of view.

¹ The Eastern question.

CHAPTER XIV.

SCHEME FOR THE ORGANISATION OF AN INTERNATIONAL
GOVERNMENT.

N.B.—*To be read only in conjunction with the previous discussions.*

A treaty for the establishment of an International Government, in which all recognised States should be invited to participate, to be negotiated in Two Parts.

Part I. An undertaking by the parties to reduce, simultaneously and proportionally, their national forces to the limit which they may reciprocally recognise as necessary for municipal purposes, but so as to preserve the *relative* power of each State unchanged.

Part II. An undertaking to establish a government for international purposes exclusively, consisting of a legislature, judicature, executive, and exchequer.

I. *Of the Legislative Department.*

The Legislature shall consist of a Senate and a Chamber of Deputies.

1st, *Of the Senate.*

(a) The Senate shall be chosen by the Crown or other chief central authority, acting along with the upper house of each State, or, in States in which there is no upper house, by the chief central authority of the State.

(b) The senators shall be appointed for life.

(c) The number of senators shall be in the proportion of one to three of the deputies sent by the same State.

(d) Each senator shall enjoy an international title, which shall descend as an honour to his eldest son, or other male representative, but which shall not confer any international privilege without a new nomination.

(e) Persons holding international titles shall have both national and international precedence over those of corresponding rank in separate States.

(f) Senators, being persons who have already attained to high position and fortune, shall receive no remuneration for their services, or compensation for travelling or other expenses, from the international exchequer.

(g) No senator shall be less than thirty years of age.

(h) Each senator shall have one vote only.

2d, Of the Chamber of Deputies.

(a) The Chamber of Deputies shall be chosen by the lower house of each State in which there is an upper and a lower house; in States where there is but one house, by that house; and in States in which there is no representative government, they shall be nominated by the Crown, or other central authority of the State.

(b) The number of deputies shall be in the proportion of three to one of the number of senators sent by the same State.

(c) Each of the six great States—Germany, France, Russia, Austria, Italy, and England—shall send five senators and fifteen deputies; and each of the smaller States shall send a number proportioned to its international importance, as

measured by population, area, free revenue, and the like, as these shall be determined by the representatives of the six great Powers.

(d) International deputies shall be appointed for such period as their own States shall determine.

(e) They shall not enjoy hereditary rank; but during their tenure of office they shall be entitled to precedence over members of the lower national legislative assemblies.

(f) Each deputy shall receive from the international exchequer a sum equivalent to, say, £1000, in name of expenses, for each session in which he shall serve.¹

(g) Each deputy shall have one vote.

(h) The Chamber of Deputies shall elect its own president or speaker, who shall receive, say, £5000 for each session, in addition to £1000 which he receives in the name of expenses.

3d, Of the Bureau or Ministry.

(a) The Bureau shall consist of fifteen members, of whom five shall be senators chosen by the Senate, and ten shall be deputies chosen by the Chamber of Deputies.

(b) The elections shall be annual, but the members shall be re-eligible.

(c) Each member of the Bureau shall receive, say, £1000, which, in the case of members of the Chamber of Deputies, shall be in addition to the £1000 which they already enjoy.

¹ Dr Bluntchli finds amusement in this and my other monetary proposals, which he regards as characteristic of the nationality of the author. I have not remarked that his countrymen are characteristically insensible to pecuniary considerations, and amongst them, as amongst us, I believe that the value of *practical* work will be found to bear a pretty close relation to pecuniary remuneration. It is only theoretical work that can be put aside in "*die Theilung der Erde*."

(*d*) The Bureau shall always contain one representative, at least, of each of the six great Powers.

(*e*) The Bureau shall elect the president of the International State from amongst its own members, who shall be president of the Senate *ex officio*. In the event of his having been a deputy when chosen president, he shall become and continue to be a senator for life.

(*f*) No reigning sovereign or minister of State, whilst he holds office, shall be president.¹

(*g*) The president shall hold office only for one session, but shall be re-eligible each alternate session.

(*h*) The president shall receive, say, £10,000 for each session.

4*th*, The ultimate place of meeting, failing Constantinople, shall be the Canton of Geneva, which shall be declared international property; but preliminary meetings may be held in Belgium or Holland.

5*th*, The time of meeting shall be in the autumn of each year, between the sessions of the various national legislatures.

6*th*, *Of the Order of Business.*

¹ The author of the *Mission Actuelle des Souverains* proposes (p. 391) that "le chef de l'État dans la capitale duquel se réuniraient les Conseils," shall preside, with the title of *Empereur Arbitral*. The objection to this proposal, and also to the peripatetic character which he and many others—Dr Bluntschli included—have assigned to the international organisation, is that no affairs of international importance in which the State in which the meeting was held was deeply interested could be disposed of. How, for example, could the question of our Indian frontier be discussed either at St Petersburg under the presidency of the Emperor, or in London under the presidency of Queen Victoria, or any deputy appointed by her? The international character of the body would be wholly destroyed by such an arrangement. If, on the other hand, the president were a high official chosen by the international body itself, his personal nationality would excite comparatively little jealousy.

(a) The arrangements as to the introduction of measures in so far as practicable shall be in accordance with the practice of national legislatures.

(b) The assent of the president shall be requisite to give the validity of an international law to any measure which may be adopted by a majority of both houses; but in the event of his having already twice refused his assent, the measure shall be submitted to the Bureau, and if adopted by a majority of its members, shall pass into law.

7th, Of the Nature of Business.

(a) All national questions shall be excluded from the deliberations of the International Assembly; but that body shall itself be entitled to determine whether any question brought before it be national or international.

(b) Civil wars, as opposed to rebellions, shall be within the jurisdiction of the International Assembly; and that body shall itself be entitled to determine what international commotions possess the one character or the other.

(c) Colonial and extra-European questions, not involving questions of peace and war between European States, shall be excluded from the jurisdiction of the International Assembly, except when the representatives of countries out of Europe have been admitted on the same footing with the representatives of European States.

(d) Claims for accession of territory and changes of frontier within Europe shall be competent to the Assembly, and may be disposed of either directly or by remit to the judicial department.

(e) Debts contracted by any separate State, whether with

private lenders or with other States, shall be enforced by the International Government by such procedure as it may find expedient.

(*f*) Bankruptcy, during its continuance, shall exclude the representatives of the bankrupt State from sitting or voting in the International Legislature.

II. *Of the Judicial Department.*

(*a*) The judicial tribunal shall consist of two branches—the one civil, the other criminal.

(*b*) The judges shall be appointed by the Bureau, the president, in case of equality, having a casting vote.

(*c*) There shall be fourteen judges and a president, six of whom, at least, shall be chosen from the six great Powers, one from each.

(*d*) The judges shall be appointed for life, and paid at a higher rate than the judges of municipal courts.

(*e*) The judges shall enjoy the rank and hereditary title of senators, but shall be ineligible for any legislative or other political appointment, whether national or international, during their tenure of office.

(*f*) In civil causes all the judges shall constitute a single court, and their judgment shall be determined by a majority of votes.

(*g*) All questions of public international law, involving pecuniary or territorial claims, rectification of boundaries, and the like, in so far as their solution depends on the construction of subsisting treaties, or of the legislative enactments of the International Government, shall be competent to the civil tribunal, and may be brought before

it either by the parties themselves, or remitted to it by the Bureau.

(h) Questions of private international law shall be competent to it only on an appeal from a State tribunal, sanctioned by the government of the State to which one or other of the parties to it belongs.

(i) There shall be an attorney-general named by the Bureau by whom civil suits may be instituted in name of the government.

(j) The attorney-general shall be the public prosecutor of international crimes, at whose instance, or with whose concurrence, all prosecutions before the criminal court shall be instituted, but whose declinature to prosecute on the application of a private party shall be subject to an appeal to the Bureau.

(k) There shall be an international bar to which the members of the bars of the several States, or persons who have taken the highest legal degrees in State universities, shall be admitted by the Court on such further terms as shall be determined.

(l) The judges shall be chosen in the first instance from the judges of the highest tribunals of the several States; but ultimately members of the international bar shall be eligible though they have held no judicial appointment.

(m) Members of State bars shall be competent to appear before the international tribunal for clients who are citizens of the States to which they belong; but they shall not accept general practice unless they have been admitted to the international bar.

III. *Of the Executive Department.*

(a) Each separate State, when called upon, shall be bound to supply a contingent of men, or an equivalent in money, of such extent as the legislative department may determine, and proportioned to the number of representatives assigned to it, for the enforcement of the enactments of the International Legislature, and of the decrees of the international courts.

(b) All officers of the international force above the rank of colonel shall be commissioned by the International Bureau, and shall be responsible to the International Government alone.

(c) An act of war by any separate State, without the consent of the International Government, or the levying of troops beyond the force assigned to it by the treaty of proportional disarmament, shall be treated as an act of international rebellion, and the representatives of such State shall be excluded from the deliberations of the International Legislature during the continuance of such rebellion.

(d) Any interference on the part of a separate State or of separate States, with the discharge of his international duties by a member of the International Legislature or of the international tribunals, shall be treated as an act of international rebellion.

(e) There shall be a small standing force at the seat of the International Government, supplied by the separate States in the proportion above mentioned, for the purpose of enforcing order, and averting sudden danger. This force shall be under the orders of the president, who shall be responsible to the Legislature for any unusual service in which it may be engaged.

(f) Beyond supplying its portion of this force, no separate

State shall be bound to call out its international contingent without an order from the president setting forth an act of the International Legislature.

(g) The standing force shall be paid by the International Government, and each international contingent, when in the field, shall be paid by the State to which it belongs, at the same rate at which it pays the troops which it maintains for municipal purposes, or for the government of its colonies and other dependencies.

(h) All civil officers and servants employed by the International Government shall likewise be paid by it, and under its protection, even when natives of the State in which they are employed; but no citizen of any separate State shall incur any international penalty for declining international employment.

IV. *Of the Financial Department.*

(a) The expenses of the International Government shall be defrayed by an international tax, to be levied by the government of each State upon its citizens; and the extent of such tax shall be proportioned to the number of representatives which the State sends to the International Legislature.

(b) The financial affairs of the whole international organisation shall be under the management of the Bureau, or of officers whom the Bureau shall appoint.

CONCLUSION.

In the preceding pages I have attempted to look at the subject of international organisation as a general European question, and mainly from Continental points of view. In this attempt I have been somewhat favoured by circumstances; and I hope that I may have succeeded in bringing into prominence most of the difficulties to the realisation of a scheme of interdependence that are likely to present themselves to the minds of my Continental critics, whatever they may think of the manner in which I have dealt with them.

But it is obvious that, at the stage which intercommunication has reached, Europe is no more independent of the other continents of the globe than the separate States of Europe are independent of each other. Europe has burst her bounds in all directions, and in becoming the centre of cosmopolitan life, she has ceased to be self-sufficing. The heart can no more dispense with the members than the members with the heart, and the very food and raiment of Europe now come from the uttermost ends of the earth. Within the lifetime of many of us, a fifth continent has risen from the ocean and been peopled by our race; and if this vast portion of the territorial globe is to be permanently added to our already prodigious colonial empire, England, at no distant period, must attain to an importance which will altogether change her relative position amongst European States. If rights are

necessarily proportioned to facts, the rights of the greater England of the future cannot be limited to those of the lesser England of the past; and as this expansion is taking place with bewildering rapidity, provision would require to be made for it in any international organism which aimed at a permanent character. Something similar, though not to the same extent, is apparent in the case of Russia, which is gradually stretching into regions of Asia, the climatic characteristics of which do not, as in tropical regions, preclude the permanent settlement of men of northern blood. On a much smaller scale the same process is observable in other States; and there are few of the maritime States of Europe the relative importance of which may not be changed by the ties which link them to the extra-European world. Does this new difficulty, then, the reality of which it is impossible to ignore, render the whole scheme of international organisation impracticable; or, if not, how is it to be met?

Now I do not see that the problem presented to us by the expansion of States is necessarily insoluble, more than the problems arising from the progress of States in other directions. We live in a world of perpetual change, and provision for change must form an element in every scheme which we form for the guidance of our future life. What the extent, or even the character, of the change may be, we cannot foresee with precision; but we can often, as in this case, foresee the direction which it will take; and the provision we make for it, provided it be of a character sufficiently elastic, may reasonably be expected to adjust itself to the form in which the change shall ultimately present itself. If States are to grow

larger in fact, we must make provision for recognising the larger rights which these facts will engender. If they have more to represent, they must have more representatives; and to meet this contingency, our scheme must possess self-adjusting elements.

But if we look at the problem in the form in which it seems most likely ultimately to arise, I think we shall see that changes of relative position amongst the existing States of Europe are not likely to be called for, in consequence of their extra-European expansion, to so great an extent as we might at first imagine. It is rather in the ethnical than in the political direction that the aspirations of my own countrymen will probably be realised, and it is with a greater number of Englands rather than with one greater England, that international politics will have to reckon. As regards our greater and more distant colonies, at all events—notwithstanding Mr Seeley's eloquent protest¹—I am disposed to accept Turgot's dictum, that "colonies are like fruits, which only hang till they ripen." It is inconceivable to me that any advances which have as yet been made, or that seem physically possible in locomotion and the transmission of intelligence, can ever convert colonies on the other side of the globe, like Australia and New Zealand, into outlying portions of England; or that communities so much greater, richer, and more powerful than England as they are certain to become, can permanently consent to be political dependencies. They are not ripe as yet; and, till they ripen, I hope they will cling loyally to us, as I am quite sure we shall cling to them.

¹ *The Expansion of England.*

It was no wonder that Bentham's proposal,¹ that we should throw off our colonies in order to escape the international entanglements in which he imagined they might involve us, was felt to be an outrage on the feelings of Englishmen. A good father would as soon consent to turn his young son out of doors, in order to avoid the cost of rearing him and the trouble of his education. But the time will come when the son will grow up, and the father will prove his love for him, not by "expanding" his own house and household, but by facilitating his son's removal to another house and helping him to become the head of a separate household. I believe it to be a mistake to ascribe the separation of the United States from this country entirely, or even mainly, to the old colonial system, narrow and mistaken though that system was, or to imagine that a wiser king than George III. could long have averted it. If we go back no further than to the landing of the Mayflower on the 22d December 1620,—between that period and Washington's appointment as President in 1789, we have 169 years, which is more than three times the age of the oldest of our Australian colonies. Now even if the process of drifting apart should be accelerated by no misunderstanding similar to that which occurred between this country and the United States, as the total change of our colonial policy renders probable, to what changes must we look forward in the next hundred years? Every one who has had to do with colonists knows how very much stronger are the colonial feelings, even of the first generation of native colonists, than those of emigrants ever become; and in a hundred years four,

¹ *Ante*, p. 228.

and in some cases five, generations will have sprung from the soil.

It is impossible to fix a period of ripening, because it is dependent on many conditions which may or may not arise. A feeling of injustice like that created by the old colonial system, in which the colonies were regarded as existing, not for their own sake, but for the sake of the mother-country, will, as I have said, certainly hasten it. But assuming matters to take their normal course, and a local self-government to be freely granted, as it is now granted by England to all her colonies of European blood, there is one consideration which I think may help us to guess at what stage of its history a colony will usually cease to cling to the parent stem. Emigrants for the most part do not belong to the historical classes, by which I mean the classes whose memories of their past are aided by written records, family pictures, registered title-deeds, armorial bearings recorded at the Herald's College, and the like. They remember only what they themselves have known, or what their fathers or grandfathers have told them. They feel no inducement to remember more; and in the case of many of them, it is to be feared, no small inducement to remember less. Now information of this kind will rarely extend beyond a century and a half. After the lapse of 150 years, with the exception of a few cadets of families which have continued to hold their own, there will scarcely be a man or a woman in Australia who knows anything of his or her family ties to this country; and as the State rests on the family, when the family link is broken the State link goes along with it, and the political connection ceases to be one for which either

the colony or the mother-country will make any sacrifice. All that remain are the ties of race and speech, which are indelible, and cost nothing to maintain; and these, I believe, our colonies, or the separate political communities which grow out of them, will continue to cherish as proud and precious possessions. Far from being weakened, these latter ties will be strengthened by the severance of the political link; and I look forward to a growing *rapprochement* between ourselves and our American cousins, now that the relations between our countries are those not of national but international dependence. Whether any international organisation, limited to communities of Anglo-Saxon race, and having its centre in London, may grow out of this ethnical bond, is one of the most interesting questions which at present occupy the minds of speculative politicians. The chief obstacles to it seem to consist in the attitude which the United States have assumed as the ruling Power in the Western Hemisphere, and entire want of community of interest between colonies so distant from each other as Canada, Australia, and South Africa. For purposes of mutual protection, there can be little doubt that the ethnical bond would suffice to unite them, and that the United States would not be slow to interpose in the event of any colony of Anglo-Saxon race being seriously menaced by a foreign State. But the United States would not enter into any confederation which embraced communities out of America, and, without the United States, an Anglican confederation would be incomplete as a representation of English-speaking States, and would not exhaust the ethnical bond. But what is important for us here to

remark is, that this is a colonial and municipal, not an international question; and that the formation of such a confederacy, should it take place, would no more affect the international organism than the existence of the composite empire of Germany, or of the American Union itself.

Another question of momentous interest and importance which we may here put aside is, whether these new States are to be republics or monarchies. I am myself no admirer of republics of the modern democratic type, and I regard it as still an open question whether their existence be compatible with the organic structure of society, which is the only guarantee against political anarchy. So far as it has yet gone, the great North American republic is no doubt an encouraging instance; but, on the other hand, it must be borne in mind that the only decent state in South America is a monarchy.

But whatever may be the forms of government which they assume, the gradual substitution of ethnical for political bonds of union, both between these new communities themselves and between them and the mother-country, I regard as not only inevitable but desirable. The notion that the progress of the Anglo-Saxon race can take place only by the expansion of England, appears to me to belong to the exclusively English, or rather, I should say, to the London school of thought. London is the greatest city in the world, and as the world consists of nothing but cities and suburbs, London and its suburbs are gradually to expand till they cover the world! What is eventually to become of the old nationalities of Continental Europe is not, perhaps, very apparent; but the Londoner does not trouble himself much about them. He

dismisses them, like Napoleon, as a tiresome subject, and turns to the "fresh woods and pastures new" of greater England. There, at all events, he conceives that steam and electricity will prevent the growth of separatist aspirations, and stamp out any pestilent traces of separate national life which may still linger in Scotland or in Ireland. Now I cannot accept this cosmic conception, even when limited to the British empire. My readers are aware that throughout this work I have represented the freedom of national life and thought as the object of the law of nations; and, as an optimist, I believe that, as time rolls on, this subject will be more and more fully realised. In the almost entire autonomy in local affairs which has been conceded to the whole of our colonies of European blood, a very important step has already been made in this direction, and so far from the process of assimilation going on even within the three kingdoms, there seems every reason to anticipate that Scotland, at no distant period, will lay claim to that local autonomy for which Ireland has never ceased to cry out, and which her own incapacity for self-government can alone justify us in refusing her. Now I say this in no spirit of hostility,—on the contrary, I say it in the interest of England, and even of London, quite as much as in the interest of the colonies or of the other two members of what, I hope, will always continue to be the United Kingdom. Nothing could be more dreary, even to Londoners themselves, than one boundless and never-ending London, peopled by a homogeneous though probably by no means a harmonious race. It is in contact with variety and originality of character that the enjoyment of life consists, far more than in mere change

of physical locality, and, if left to develop along separate lines, there is no reason to doubt that, a hundred years hence, each of our own colonies will afford us this form of enjoyment quite as much as the United States of America do at present. New dialects and even physical types, differing from that of the mother-country, will appear; new ideals of beauty and refinement will give rise to new forms of thought and fresh æsthetic conceptions. For a time the efforts of young communities in these directions will probably be less successful than those which will continue to be made in old countries; but it by no means follows that this will always be so. The struggle for existence in crowded and exhausted communities is unfavourable to that life of contemplation which Aristotle pronounced to be the highest of all. No man can tell where God will send His rarest gifts; and the appearance of ten men of genius might, in a single generation, transfer the spiritual hegemony of the Anglo-Saxon race from the mother-country to one of her colonial children.

If the view which I have here presented of the probable future of our colonial empire be correct, it is obvious that the new element with which the international body would have to deal would not be the recognition of greater States, but of a greater number of States. The problem which we internationalists have hitherto considered would not be changed in character, but only increased in magnitude.

It is not impossible that new extra-European States might, like America, decline all connection with an international body of which the members must continue to be preponderatingly Europeans. Apart from the scheme of an Anglo-

Saxon confederation, it is conceivable that the American and Polynesian groups might form themselves into separate international organisms of their own ; but, sprung as they are from European roots, it is inconceivable that they should be independent of the great European organism, or that it should be independent of them. Most of them contain what Savigny would have called "particularist" elements, resulting from nationalities which, for several generations, cannot be wholly absorbed by the prevailing colonial type ; and very considerable advantages might result from the interposition of an international legislative and judicial body, by which any grievances which they might allege might be considered. The relations between the Dutch Boers of the Transvaal and the Cape Colony, for example, might be thus adjusted in a manner more satisfactory to the interested parties, both in Africa and in Europe, than they can be by British Commissioners or by the British Parliament. As matters stand, Holland cannot venture to open her lips, otherwise than by popular demonstrations of dissatisfaction ; and however just the policy of England may be, it is regarded by the whole of continental Europe with as much jealousy and suspicion as the judgment of a prize-court.

Whether colonies of dependencies of non-European race are destined to reach the stage of national development which will entitle them to international recognition by European States, is a question that admits of no present decision. Nor will the decision, at any time, be the same for all of them. The Indian problem for us is the most momentous. Much importance is justly attached to the influences of commerce

and industry, to which in Upper India that of colonisation may now be added; but the future of India is hidden in mystery so profound, that even so bold and thoughtful a writer as Mr Seeley does not dare to penetrate it. For my own part, I shall venture to add only one remark which I do not remember to have found in any of the numerous articles and speeches which I have read on the subject. The education of the natives of India of both sexes is progressing with such rapidity as to bring native and European thought into much closer contact than at any former period, and this process cannot fail to result in the gradual breaking down of those barriers of religious and social prejudice which have hitherto separated the conquerors from the conquered. However the matter may stand with Mahometans, there is nothing in the fundamental creed of Hindus or Buddhists which, even if conversion to Christianity should fail to become general, need hinder progress along the lines of that ethical creed which forms the basis of all religions. Nor, as regards social organisation, are the differences of so fundamental a kind as we sometimes suppose, seeing that the institution of Caste had no place in the earliest time. In the Aryan race, as existing in India, there is no inferiority, either intellectual or physical, which, in the event of intermixture of blood, would exercise a degrading influence on families of pure Anglo-Saxon descent. On both sides the tie of kindred will ultimately be felt to be of a closer kind than the ties of common humanity which bind us to the Mongolian, the Polynesian, the Negro, or even the Semitic race. It is time and distance alone that have held us so long apart; and now

that our destinies have brought us together in so marvellous a manner, the natural course seems to be that we should embrace and be friends. In these circumstances it is not inconceivable that, at his next avatar, Vishnu should assume the form of Hymen-the-Uniter ! Small as are the numbers of the English in India, there is no reason to believe that any single section of a population so divided as that of the native races will ever be able to throw off our yoke by force of arms, or to hold undisputed possession of the land if it did so. But what is impossible to Mars may be possible to Venus. When the pupils of the Zenana missions issue from their seclusion, adorned with the graces of the East and the culture of the West, they may conquer their conquerors as the Anglo-Saxon heiresses conquered the Norman nobles, and a race may spring up not unworthy to inherit an empire which is ruled by a woman.

A P P E N D I X

APPENDIX.

No. I.

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED STATES IN THE FIELD.¹

SECTION I.

Martial law---Military jurisdiction---Military necessity--- Retaliation.

1. A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the martial law of the invading or occupying army, whether any proclamation declaring martial law, or any public warning to the inhabitants, has been issued or not. Martial law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its martial law.

2. Martial law does not cease during the hostile occupation, except by special proclamation, ordered by the commander-in-chief; or by special mention in the treaty of peace

¹ These instructions were prepared by the celebrated jurist Francis Lieber, and revised by a board of officers, of whom Major-General E. A. Hitchcock was president. Having been approved by the President of the United States, they were issued from the Adjutant-General's office at Washington, April 24, 1863, and used during the war. They have served as a basis for most of the subsequent compilations.

concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.

3. Martial law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue, either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.

4. Martial law is simply military authority exercised in accordance with the laws and usages of war. Military oppression is not martial law; it is the abuse of the power which that law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honour, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

5. Martial law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed—even in the commander's own country—when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations.

6. All civil and penal law shall continue to take its usual course in the enemy's places and territories under martial law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under martial law, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

7. Martial law extends to property, and to persons, whether they are subjects of the enemy or aliens to that government.

8. Consuls, among American and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to martial law in cases of urgent necessity only: their property and business are not exempted. Any delinquency they commit against the established military rule may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

9. The functions of ambassadors, ministers, or other diplomatic agents, accredited by neutral Powers to the hostile government, cease, so far as regards the displaced government; but the conquering or occupying Power usually recognises them as temporarily accredited to itself.

10. Martial law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations.

11. The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the

enemy during the war, but also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in case of war between the contracting Powers.

It disclaims all extortions and other transactions for individual gain; all acts of private revenge, or connivance at such acts.

Offences to the contrary shall be severely punished, and especially so if committed by officers.

12. Whenever feasible, martial law is carried out in cases of individual offenders by military courts; but sentences of death shall be executed only with the approval of the chief executive, provided the urgency of the case does not require a speedier execution, and then only with the approval of the chief commander.

13. Military jurisdiction is of two kinds: first, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offences under the statute law must be tried in the manner therein directed; but military offences which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country.

In the armies of the United States the first is exercised by courts-martial; while cases which do not come within the "Rules and Articles of War," or the jurisdiction conferred by statute on courts-martial, are tried by military commissions.

14. Military necessity, as understood by modern civilised nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

15. Military necessity admits of all direct destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another, and to God.

16. Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

17. War is not carried on by arms alone. It is lawful to starve the hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.

18. When the commander of a besieged place expels the non-combatants, in order to lessen the number of those who

consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender.

19. Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the non-combatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

20. Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilised existence that men live in political, continuous societies, forming organised units, called States or nations, whose constituents bear, enjoy, and suffer, advance and retrograde together, in peace and in war.

21. The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile State or nation, and as such is subjected to the hardships of the war.

22. Nevertheless, as civilisation has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honour as much as the exigencies of war will admit.

23. Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

24. The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection, and every disruption of family ties. Protection was, and still is, with uncivilised people, the exception.

25. In modern regular wars of the Europeans, and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions.

26. Commanding generals may cause the magistrates and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel every one who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.

27. The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilised nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.

28. Retaliation will therefore never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and, moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution.

Unjust or inconsiderate retaliation removes the belligerents

farther and farther from the mitigating rules of a regular war, and by rapid steps leads them nearer to the internecine wars of savages.

29. Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse.

Peace is their normal condition ; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

30. Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defence against wrong ; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted ; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honour.

SECTION II.

Public and private property of the enemy—Protection of persons, and especially women ; of religion, the arts and sciences—Punishment of crimes against the inhabitants of hostile countries.

31. A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property

remains in abeyance during military occupation, and until the conquest is made complete.

32. A victorious army, by the martial power inherent in the same, may suspend, change, or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

33. It is no longer considered lawful—on the contrary, it is held to be a serious breach of the law of war—to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own, and make it a portion of its own country.

34. As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning, or observatories, museums of the fine arts, or of a scientific character—such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it.

35. Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

36. If such works of art, libraries, collections, or instru-

ments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering State or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.

In no case shall they be sold or given away, if captured by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured.

37. The United States acknowledge and protect, in hostile countries occupied by them, religion and morality; strictly private property; the persons of the inhabitants, especially those of women; and the sacredness of domestic relations. Offences to the contrary shall be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, land, boats or ships, and churches, for temporary and military uses.

38. Private property, unless forfeited by crimes or by offences of the owner, can be seized only by way of military necessity, for the support or other benefit of the army of the United States.

If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity.

39. The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to the circumstances arising out of the war—such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenue of the invaded territory, until the

military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped.

40. There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land.

41. All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.

42. Slavery, complicating and confounding the ideas of property (that is of a *thing*), and of personality (that is of *humanity*), exists according to municipal law or local law only. The law of nature and nations has never acknowledged it. The Digest of the Roman law enacts the early dictum of the pagan jurist, that "so far as the law of nature is concerned, all men are equal." Fugitives escaping from a country in which they were slaves, villeins, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

43. Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made

free by the law of war is under the shield of the law of nations, and the former owner or State can have, by the law of post-liminy, no belligerent lien or claim of service.

44. All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorised officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offence.

A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

45. All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money, whether on sea or land, can now only be claimed under local law.

46. Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offences to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offence may require; if by soldiers, they shall be punished according to the nature of the offence.

47. Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only pun-

ishable as at home, but in all cases in which death is not inflicted, the severer punishment shall be preferred.

SECTION III.

*Deserters—Prisoners of war—Hostages—Booty on the
battle-field.*

48. Deserters from the American army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture, or being delivered up to the American army; and if a deserter from the enemy, having taken service in the army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war, requiring redress or retaliation.

49. A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers of whatever species of arms; all men who belong to the rising *en masse* of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

50. Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals,

or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe-conduct granted by the captor's government, prisoners of war.

51. If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise under a duly authorised levy, *en masse* to resist the invader, they are now treated as public enemies, and if captured, are prisoners of war.

52. No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.

If, however, the people of a country, or any portion of the same, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.

53. The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses and servants, if they fall into the hands of the American army, are not prisoners of war, unless the commander has reasons to retain them. In this latter case, or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

54. A hostage is a person accepted as a pledge for the

fulfilment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.

55. If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

56. A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

57. So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts, are no individual crimes or offences. No belligerent has a right to declare that enemies of a certain class, colour, or condition, when properly organised as soldiers, will not be treated by him as public enemies.

58. The law of nations knows of no distinction of colour; and if an enemy of the United States should enslave and sell any captured persons of their army, it would be a case for the severest retaliation, if not redressed upon complaint.

The United States cannot retaliate by enslavement; therefore death must be the retaliation for this crime against the law of nations.

59. A prisoner of war remains answerable for his crimes against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

60. It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it *impossible* to cumber himself with prisoners.

61. Troops that give no quarter have no right to kill enemies already disabled on the ground, or prisoners captured by other troops.

62. All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

63. Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.

64. If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy.

65. The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they lose all claim to the protection of the laws of war.

66. Quarter having been given to an enemy by American troops, under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if, within three days after the battle, it be discovered that he belongs to a corps which gives no quarter.

67. The law of nations allows every sovereign government

to make war upon another sovereign State, and therefore admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant.

68. Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

69. Outposts, sentinels, or pickets are not to be fired upon, except to drive them in, or when a positive order, special or general, has been issued to that effect.

70. The use of poison in any manner, be it to poison wells, or food, or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

71. Whoever intentionally inflicts additional wounds on an enemy already wholly disabled, or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the army of the United States, or is an enemy captured after having committed his misdeed.

72. Money and other valuables on the person of a prisoner, such as watches or jewellery, as well as extra clothing, are regarded by the American army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonourable, and is prohibited.

Nevertheless, if *large* sums are found upon the persons of

prisoners, or in their possession, they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the army, under the direction of the commander, unless otherwise ordered by the government. Nor can prisoners claim as private property, large sums found and captured in their train, although they had been placed in the private luggage of the prisoners.

73. All officers, when captured, must surrender their side-arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalise admiration of his distinguished bravery, or approbation of his humane treatment of prisoners before his capture. The captured officer to whom they may be restored cannot wear them during captivity.

74. A prisoner of war being a public enemy, is the prisoner of the government, and not of the captor. No ransom can be paid by a prisoner of war to his individual captor, or to any officer in command. The government alone releases captives, according to rules prescribed by itself.

75. Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

76. Prisoners of war shall be fed upon plain and wholesome food whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

77. A prisoner of war who escapes may be shot, or otherwise killed in his flight; but neither death nor any other

punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow-prisoners or other persons.

78. If prisoners of war, having given no pledge nor made any promise on their honour, forcibly or otherwise, escape, and are captured again in battle, after having rejoined their own army, they shall not be punished for their escape, but shall be treated as simple prisoners of war, although they will be subjected to stricter confinement.

79. Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

80. Honourable men, when captured, will abstain from giving to the enemy information concerning their own army; and the modern law of war permits no longer the use of any violence against prisoners, in order to extort the desired information, or to punish them for having given false information.

SECTION IV.

*Partisans—Armed enemies not belonging to the hostile army—
Scouts—Armed prowlers—War-rebels.*

81. Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached

from the main body for the purpose of making inroads into the territory occupied by the enemy. If captured, they are entitled to all the privileges of the prisoner of war.

82. Men, or squads of men, who commit hostilities, whether by fighting, or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organised hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers,—such men, or squads of men, are not public enemies, and therefore, if captured, are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

83. Scouts or single soldiers, if disguised in the dress of the country, or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

84. Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army, for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

85. War-rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in

small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they, if discovered and secured before their conspiracy has matured to an actual rising, or to armed violence.

SECTION V.

*Safe-conduct—Spies—War-traitors—Captured messengers—
Abuse of the flag of truce.*

86. All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.

Exceptions to this rule, whether by safe-conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government, or by the highest military authority.

Contraventions of this rule are highly punishable.

87. Ambassadors, and all other diplomatic agents of neutral Powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international affront if the safe-conduct is declined. Such passes are usually given by the supreme authority of the State, and not by subordinate officers.

88. A spy is a person who secretly, in disguise or under false pretence, seeks information with the intention of communicating it to the enemy.

The spy is punishable with death, by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

89. If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer, or a private citizen, he shall suffer death.

90. A traitor under the law of war, or a war-traitor, is a person in a place or district under martial law, who, unauthorised by the military commander, gives information of any kind to the enemy, or holds intercourse with him.

91. The war-traitor is always severely punished. If his offence consists in betraying to the enemy anything concerning the condition, safety, operations or plans of the troops holding or occupying the place or district, his punishment is death.

92. If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war-traitor, and death is the penalty of his offence.

93. All armies in the field stand in need of guides, and impress them if they cannot obtain them otherwise.

94. No person having been forced by the enemy to serve as guide is punishable for having done so.

95. If a citizen of a hostile and invaded district, voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war-traitor, and shall suffer death.

96. A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country.

97. Guides, when it is clearly proved that they have misled intentionally, may be put to death.

98. All unauthorised or secret communication with the enemy is considered treasonable by the law of war.

Foreign residents in an invaded or occupied territory, or foreign visitors in the same, can claim no immunity from this law. They may communicate with foreign parts, or with the inhabitants of the hostile country, so far as the military authority permits, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule.

99. A messenger carrying written despatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army, or its government, if armed, and in the uniform of his army, and if captured while doing so, in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances connected with his capture must determine the disposition that shall be made of him.

100. A messenger or agent who attempts to steal through the territory occupied by the enemy, to further, in any manner, the interests of the enemy, if captured, is not entitled to the privileges of the prisoner of war, and may be dealt with according to the circumstances of the case.

101. While deception in war is admitted as a just and necessary means of hostility, and is consistent with honourable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous, and it is so difficult to guard against them.

102. The law of war, like the criminal law regarding other offences, makes no difference on account of the difference of sexes, concerning the spy, the war-traitor, or the war-rebel.

103. Spies, war-traitors, and war-rebels, are not exchanged according to the common law of war. The exchange of such persons would require a special cartel, authorised by the government, or, at a great distance from it, by the chief commander of the army in the field.

104. A successful spy or war-traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war-traitor, but he may be held in closer custody as a person individually dangerous.

SECTION VI.

Exchange of prisoners—Flags of truce—Flags of protection.

105. Exchanges of prisoners take place—number for number—rank for rank—wounded for wounded—with added condition for added condition—such, for instance, as not to serve for a certain period.

106. In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the government, or of the commander of the army in the field.

107. A prisoner of war is in honour bound truly to state to the captor his rank; and he is not to assume a lower rank than belongs to him, in order to cause a more advan-

tageous exchange; nor a higher rank, for the purpose of obtaining better treatment.

Offences to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

108. The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessities.

Such arrangement, however, requires the sanction of the highest authority.

109. The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded, it cannot be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

A cartel is voidable so soon as either party has violated it.

110. No exchange of prisoners shall be made except after complete capture, and after an accurate account of them, and a list of the captured officers, has been taken.

111. The bearer of a flag of truce cannot insist upon being admitted. He must always be admitted with great caution. Unnecessary frequency is carefully to be avoided.

112. If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such a flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle.

113. If the bearer of a flag of truce, presenting himself

during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

114. If it be discovered, and fairly proved, that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy.

So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offence, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.

115. It is customary to designate by certain flags (usually yellow), the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles, when hospitals are situated within the field of the engagement.

116. Honourable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared.

An honourable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

117. It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags.

118. The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible.

SECTION VII.

The parole.

119. Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole.

120. The term *parole* designates the pledge of individual good faith and honour to do, or to omit doing, certain acts after he who gives his parole shall have been dismissed, wholly or partially, from the power of the captor.

121. The pledge of the parole is always an individual but not a private act.

122. The parole applies chiefly to prisoners of war whom the captor allows to return to their country, or to live in greater freedom within the captor's country or territory, on conditions stated in the parole.

123. Release of prisoners of war by exchange is the general rule; release by parole is the exception.

124. Breaking the parole is punished with death when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons must be kept by the belligerents.

125. When paroles are given and received, there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated.

126. Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach.

127. No non-commissioned officer or private can give his parole except through an officer. Individual paroles not given

through an officer are not only void, but subject the individual giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer.

128. No paroling on the battle-field, no paroling of entire bodies of troops after a battle, and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted, or of any value.

129. In capitulations for the surrender of strong places or fortified camps, the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war, unless exchanged.

130. The usual pledge given in the parole is not to serve during the existing war, unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

131. If the government does not approve of the parole, the paroled officer must return into captivity; and should the enemy refuse to receive him, he is free of his parole.

132. A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

133. No prisoner of war can be forced by the hostile

government to parole himself, and no government is obliged to parole prisoners of war, or to parole all captured officers if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

134. The commander of an occupying army may require, of the civil officers of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army; and upon their failure to give it, he may arrest, confine, or detain them.

SECTION VIII.

Armistice—Capitulation.

135. An armistice is the cessation of active hostilities for a period agreed upon between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

136. If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

137. An armistice may be general, and valid for all points and lines of the belligerents; or special—that is, referring to certain troops or certain localities only.

An armistice may be concluded for a definite time; or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

138. The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace, or to prepare during the armistice for a more vigorous prosecution of the war, do in no way affect the character of the armistice itself.

139. An armistice is binding upon the belligerents from the day of the agreed commencement; but the officers of the armies are responsible from the day only when they receive official information of its existence.

140. Commanding officers have the right to conclude armistices binding on the district over which their command extends; but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

141. It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any.

If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.

142. An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

143. When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works, as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists, whether the besieged have the right to repair breaches, or to erect new works of defence within the place during an armistice, this point should be determined by express agreement between the parties.

144. So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition, in his possession, during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

145. When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

146. Prisoners, taken in the act of breaking an armistice, must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

147. Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice: in the latter case the war is carried on without any abatement.

SECTION IX.

Assassination.

148. The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government, an outlaw, who may be slain without trial by any captor, any more than the modern

law of peace allows such international outlawry ; on the contrary, it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilised nations look with horror upon offers of rewards for the assassination of enemies, as relapses into barbarism.

SECTION X.

Insurrection—Civil war—Rebellion.

149. Insurrection is the rising of people in arms against their government, or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.

150. Civil war is war between two or more portions of a country or State, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the State are contiguous to those containing the seat of government.

151. The term *rebellion* is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions or provinces of the same who seek to throw off their allegiance to it, and set up a government of their own.

152. When humanity induces the adoption of the rules of regular war towards rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgment of their government, if they have set up one, or of them, as an independent or sovereign power.

Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power.¹

153. Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them; addressing officers of a rebel army by the rank they may have in the same; accepting flags of truce; or, on the other hand, proclaiming martial law in their territory, or levying war-taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules of war towards rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife, and settles the future relations between the contending parties.

154. Treating, in the field, the rebellious enemy according to the law and usages of war, has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

155. All enemies in regular war are divided into two general classes—that is to say, into combatants and non-combatants or unarmed citizens of the hostile government.

The military commander of the legitimate government, in

¹ The recognition of belligerent rights by England and France was grounded, not on the conduct of the North to the South, but on the proclamation of blockade.

a war of rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizens may further be classified into those citizens known to sympathise with the rebellion, without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy, without being bodily forced thereto.

156. Common justice and plain expediency require that the military commander protect the manifestly loyal citizens, in revolted territories, against the hardships of the war, as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens of the revolted portion or province, subjecting them to a stricter police than the non-combatant enemies have to suffer in regular war; and if he deems it appropriate, or if his government demands of him, that every citizen shall, by an oath of allegiance, or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law, and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government has the right to decide.

157. Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops, is levying war against the United States, and is therefore treason.

No. II.

CONFERENCE AT BRUSSELS, 1874, ON THE RULES OF
MILITARY WARFARE.

The documents relating to this subject will be found *in extenso* in the Blue-books presented to Parliament in 1874-5. They are far too voluminous for insertion in this Appendix; but the following report by Sir A. Horsford, the delegate on the part of Great Britain to Lord Derby, dated Brussels, September 4, 1874, will serve as a summary of their contents :—

REPORT ON THE PROCEEDINGS OF THE BRUSSELS CONFERENCE
ON THE PROPOSED RULES FOR MILITARY WARFARE.

The first meeting of the Conference was held on the 27th of July, and was attended by delegates of Germany, Austria, Belgium, Denmark, Spain, France, Great Britain, Greece, Italy, the Netherlands, Russia, Switzerland, and Sweden.

The Portuguese delegate not having arrived did not attend the earlier meetings of the Conference, and for the same reason the Turkish delegate was present for the first time only at the fifteenth meeting held on the 19th ultimo.

After an opening speech from Count d'Aspremont-Lynden, the Belgian Secretary of State for Foreign Affairs, welcoming the delegates, M. E. de Borchgrave, Chef du Cabinet of the Belgian Foreign Office, was selected as protocolist to the Conference, and the presidency (after having been offered to Baron Lambermont, the Belgian Under-Secretary for Foreign Affairs, who refused it on the ground that Belgium, from its neutral position, was the country the least competent to draw

up rules of warfare) was conferred on Baron Jomini, the first Russian delegate, who commenced the proceedings by reading the instructions he had received from the Emperor of Russia.

The object of his Imperial Majesty, as expressed in this document, is that the Russian project should form a practical basis for deliberations on which the final issue must depend; and the president, on more than one occasion during subsequent meetings of the Conference, declared that the proceedings amounted to nothing more than an inquiry into the subject, the result of which should be submitted to the various Governments.

At the suggestion of the Netherland delegate, it was agreed that the proceedings of the Conference should be kept secret,—an arrangement which was, however, to a certain extent defeated by the publication, a few days before the termination of the Conference, of some of the protocols in the columns of a French newspaper.

On the proposal of the president it was further agreed, that those points only on which the delegates were unanimous, should be entered in the protocols of the proceedings; and that those on which different or opposite opinions were held, should be excluded. It was, however, stipulated that any special point should be recorded, if the delegate raising the question expressed a wish to that effect.

At the second meeting of the Conference, on the 29th of July, it was decided, with reference to the delegates of various societies, who had come to Brussels with the view of assisting at the deliberations of the Congress, that only the official representatives of those Governments who had received invitations from the Emperor of Russia should attend or take part in the conferences. This decision having been con-

firmed at the next meeting of the Conference, held on the 5th of August, the president was requested to communicate it to the parties concerned.

The next step taken at this meeting was to refer the preliminary discussion of the Russian project to a committee consisting of one delegate from each State represented at the Congress; and in those cases where a country had sent more than one delegate to the Conference, it rested with the delegates of that country to determine which of them should represent it during the discussion of each question.

The subsequent consideration of the project was conducted in the following manner :—

The Articles dealing with matters of comparatively minor importance, and on which great divergences of opinion were not likely to exist, were first discussed; the more difficult, and those which involved delicate questions, being reserved until a later period of the proceedings.

The committee held nineteen sittings, fifteen of which were devoted to the first reading, and the consideration of the original Russian project.

At one of these meetings the Geneva Convention was discussed from a military point of view. At the seventeenth, eighteenth, and during part of the nineteenth sittings of the committee, the revised articles of the project underwent a second reading, and were finally submitted to the full Conference at its fourth and fifth meeting, on the 26th and 27th of August.

The first meeting of the committee was held on the 30th of July.

The proceedings commenced by Baron Lansberge, the Netherland delegate, reading a declaration to the effect that

his Government would be happy to give its adhesion to any measures calculated to diminish or alleviate the calamities of war ; and that they were also prepared to support the establishment of such rules as would determine, with regard to neutral States, the consequences of war.

The Belgian delegate, after alluding to the neutral position of Belgium, remarked that the only war in which his country could possibly be involved would be a war of defence ; and after observing that, in those States where military service is obligatory and general, the whole male population is in one way or another enrolled in the ranks, and placed thereby in the condition required by the Russian project to entitle them to the rights of belligerents, he declared that the fact of the Belgian army being raised only by conscription, and the number of its forces being limited, entails upon Belgium, in the event of war, the necessity of completing her means of defence, by a *levée* of all the available strength of the nation ; and that he therefore could not support any clause which would have the effect of either weakening national defence, or of loosening the bonds of duty by which citizens are bound to their country.

With reference to the declaration of the Belgian delegate with regard to the attitude which would be taken by his country in the event of invasion, the Russian delegate declared that the Russian project did not contemplate restraining the right and duty of every State, which might be attacked, to defend itself. The idea of the project was, he added, that in the face of the powerful organisation of modern armies, the absence of all rules would, while rendering defence less efficacious, tend to increase the chances of useless acts of cruelty and violence, as injurious to the interests of a country as to those of humanity.

Baron Jomini concluded by observing that he and his

military colleague entirely agreed with the Belgian delegate as to the principle involved in this subject, the application of which must be reserved for the Conference.

It may not be out of place here to remark, with reference to the declaration of the Belgian delegate on the subject of national defence, that at subsequent meetings of the Conference the delegates of the Netherlands, Portugal, Spain, Switzerland, and Turkey made declarations in the same sense.

It having been laid down at the first meeting of the Conference that those points only on which the delegates were unanimous should be recorded in the protocols, I thought it right to call the attention of the committee, at the meeting of the 31st July, to that part of my instructions wherein I am directed to abstain from taking part in any discussion on points extending to general principles of international law not already universally recognised and accepted, and to request that the nature of this instruction might be recorded in the protocol of the meeting.

My object in taking this course was to prevent it being assumed that, because I did not take part in certain debates, I thereby gave a tacit assent to the decisions arrived at by my colleagues.

Your Lordship is aware, from the various protocols I have had the honour of transmitting, that the rule laid down on this point has not been observed, the numerous differences of opinion being almost invariably recorded in those documents.

At a later sitting the president gave his reasons for not adhering to this course.

The fact of the articles of the original project not having been considered in regular order, and of several subjects having been reverted to at subsequent meetings after they

had apparently been disposed of, or because further instructions relating to them had been received by some of the delegates, renders it somewhat difficult to follow in the protocols the discussion on each separate question.

I have therefore considered it best, in drawing up this report, to place below the text of each chapter of the original project, taken in its regular order, a *résumé* of the arguments used relative to the subjects contained in it, without reference to the order in which they were discussed; and, at the end of the *résumé*, I have added a translation of the modified text as finally adopted by the Conference.

It must not, however, be taken for granted that this latter text represented the united opinions of the Conference. It will be seen, from the discussions which took place at the various meetings, that this was far from being the case, several of the delegates recording formal reservations on the part of their respective Governments on many of the disputed points.

ORIGINAL PROJECT.

Project for an International Convention on the Laws and Customs of War.

General Principles.

§ I. An international war is a state of open conflict between two independent States (acting alone or with allies), and between their armed and organised forces.

§ II. Operations of war must be directed exclusively against the forces and the means of making war of the hostile State, and not against its subjects, so long as the latter do not themselves take any active part in the war.

§ III. In order to attain the object of the war, all means and

all measures in conformity with the laws and customs of war, and justified by the necessities of war, shall be permitted.

The laws and customs of war forbid not only useless cruelty and acts of barbarity committed against the enemy; they furthermore require from the competent authorities the immediate punishment of those guilty of such acts, provided they have not been provoked by absolute necessity.

§ IV. The necessities of war cannot justify either treachery towards the enemy, or declaring him an outlaw, or the employment of violence and cruelty towards him.

§ V. In the event of the enemy not observing the laws and customs of war, as laid down in the present Convention, the opposing force may resort to reprisals, but only as an inevitable evil, and without ever losing sight of the duties of humanity.

Remarks.

The above five paragraphs on "General Principles," which appear at the head of the original project, were not brought forward for discussion, and do not find any place in the modified text.

The principles themselves, however, had necessarily to be considered in the course of the Conference, as they form the groundwork of several articles of the project.

ORIGINAL PROJECT.

"SECTION I.—*Of the Rights of Belligerents one towards the other.*

"CHAPTER I.—*Of Military Authority over the hostile State.*

"§ 1. The occupation by the enemy of a part of the territory of a State with which he is at war, suspends, *ipso facto*,

the authority of the legal power of the latter, and substitutes in its place the military authority of the occupying State.

“§ 2. The enemy who occupies a district can, according to the requirements of the war and in the public interest, either maintain in full force the laws existing there in time of peace, modify them in part, or suspend them altogether.

“§ 3. In accordance with the rights of war, the chief of the army of occupation may compel the departments, as well as the officers of the civil administration of police and of justice, to continue in the exercise of their duties under his superintendence and control.

“§ 4. The military authority may require the local officials to undertake on oath, or on their word, to fulfil the duties required of them during the hostile occupation; it may remove those who refuse to satisfy this requirement, and prosecute judicially those who shall not fulfil the duties undertaken by them.

“§ 5. The army of occupation shall have the right to levy for its benefit against the inhabitants all taxes, dues, duties, and tolls established by their legal Government.

“§ 6. An army occupying a hostile country shall have the right to take possession of all funds belonging to the Government, of its depots, and arms, of its means of transport, of its magazines and supplies, and, generally, of all Government property which may assist the objects of the war.

“*Note.*—All railway rolling-stock, although belonging to private companies, as also depots of arms, and, generally, all kinds of munitions of war, although belonging to private individuals, shall be equally subject to seizure by the army of occupation.

“§ 7. The use of public buildings, lands, forests, and

agricultural works belonging to the hostile State, and which are found in the occupied country, shall pass in like manner into the possession of the army of occupation.

"§ 8. The property of churches, charitable and educational establishments, of all institutions devoted to scientific or benevolent purposes, shall not be subject to seizure by the army of occupation. Every seizure or intentional destruction of such establishments, monuments, works of art, or scientific museums, shall be punished by the competent authorities."

Résumé of Discussion.

Two provisional modifications of this chapter were issued by the Russian delegate prior to its being submitted for discussion.

These modifications softened down the harsh tone which was apparent in some of the clauses of the original project. Speaking generally, their tendency was to restrict the exercise of power on the part of the invader, and in this spirit the version ultimately adopted was drawn up.

There was, however, in the original project a remarkable omission, whether intentional or not, I am unable to say.

In the very first Article of this chapter occur the words, "The occupation by the enemy of a part of the territory of a State with which he is at war;" but no definition of "occupation" was to be found in the project: and until this preliminary question had been disposed of, it was not possible to discuss either this or many other important articles.

In the modifications a definition was inserted, and that accepted now appears as the 1st Article of the modified text.

The discussions on this definition brought to light two different views of "occupation" held by the several delegates.

The German view is as follows : Occupation is not altogether of the same character as a blockade, which is effective only when it is practically carried out. It does not always manifest itself by visible signs. If occupation is said to exist only where the military power is visible, insurrections are provoked, and the inhabitants suffer in consequence. A town left without troops must still be considered occupied, and any rising would be severely punished. Generally speaking, the occupying power is established as soon as the population is disarmed, or even when the country is traversed by flying columns. It being impossible to occupy bodily each and every point of a province, the expression "territory" must, as regards occupation, be interpreted liberally.

It is claimed for this view that it is really to the benefit of the invaded, as it checks temptations to insurrection, which gives rise to the infliction of severe punishment.

The other view, which received the support of nearly all the other delegates, is to the following effect :—

Greater power must not be accorded to the invader than he actually possesses. Occupation is strictly analogous to blockade, and can only be exercised where it is effective. The occupier must always be in sufficient strength to repress an outbreak. He proves his occupation by this act. An army establishes its occupation when its positions and lines of communication are secured by other corps. If a territory frees itself from the exercise of this authority, it ceases to be occupied. Occupation cannot be presumptive.

The difficulty of determining the duration of occupation was also adverted to. The authority of the invader is not usually established directly he enters the territory ; the struggle dies out only gradually, and sometimes, in conse-

quence of a reverse, a place is temporarily abandoned to be reoccupied subsequently.

Passing on to the consideration of the rest of the chapter, it will be observed that Articles 2 and 3 of the modified text correspond to Articles 1 and 2 of the original project; Article 4 combines 3 and 4 of that project. The harsh treatment to which public officials were liable to be exposed by the provisions of the latter, disappears in the version adopted; and in case of invasion, every official is free to follow the line of conduct his conscience may dictate with regard to continuance in office.

In the course of the discussion, the Belgian delegate expressed a doubt whether, under the constitution of his country, any other power than the will of the Belgian people itself could acquiesce in a decree submitting the country to the jurisdiction of a foreigner.

Article 5 gave rise to a discussion not altogether of a practical character, of which, however, the following summary is submitted.

The question of taxes must be considered in reference to the two forms of occupation, temporary and permanent.

During a lengthy occupation taxation is the least severe method of raising impositions. When, moreover, the taxes cannot be levied, an equivalent may be taken. Further, the part of a country which is occupied must not expect to be better treated in this respect than the remainder which is not occupied, or than the country of the enemy himself; therefore it ought to be placed on the same footing as those countries to the full extent of taxation, forced or otherwise; the right of levying new taxes is therefore also claimed.

In reply, it was pointed out that the result of this system

would be, that if the Government of the invaded country demanded great sacrifices from its people in the shape of additional taxes, the invader would have the right to raise the taxation of the occupied district to the same level.

Such proceedings may, it was admitted, take place in war; but it was a serious matter for a Government to sanction them beforehand.

In the course of the discussion, the German delegate made a statement, which he reiterated several times in the course of the Conference, that the line of policy he advocates is fully as much in the interest of the invaded as of the invader; and that its adoption in this and other phases of the conduct of war, will tend to guard the former against the abuses and miseries which accompany an unregulated occupation.

In dealing with Article 6, a distinction was admitted between the money, which is the property of the Government, and that of which it is simply custodian, such as savings-bank funds, &c. It was acknowledged that the latter should be regarded as private property. A rather refined discussion took place on the question, whether it was permissible for the Government to receive in advance the proceeds of taxes which would otherwise fall into the hands of the occupier.

In treating of the matters contained in the "Observation" to Article 6, the German delegate laid down the general principle, that when it is necessary to seize the property of private individuals, the appropriation must be of a temporary character. Restitution must be made at the end of the war, or a receipt must be given.

At the fourth meeting of the Conference, held on the 26th August, Baron Baude, the French delegate, said that he had been directed by his Government to state that, in its opinion,

the words, "en dehors des cas régis par la loi maritime," used in the 6th Article of the final text, do not clearly define the guarantees which the Conference has wished to give with regard to maritime commerce of seaports situated on large streams (*cours d'eau*); and it therefore reserves to itself the right to communicate, if necessary, through the usual diplomatic channels, with the other Governments, for the purpose of arriving at a uniform interpretation of the phrase.

A note was entered in the protocol of the eleventh meeting of the committee, held on the 13th August, submitting to the Governments represented at the Conference the desirableness of considering the question of submarine telegraphs in time of war; and at the last meeting but one of the Conference, M. Vedel, the Danish delegate, announced that it was the intention of the Danish Government to communicate with the other Powers on this subject.

The following modified text of chapter i., section 1, was finally adopted by the Conference:—

Modified Text.

"Article 1. A territory is considered as occupied when it is actually placed under the authority of the hostile army.

"The occupation only extends to those territories where this authority is established and can be exercised.

"Art. 2. The authority of the legal power being suspended, and having actually passed into the hands of the occupier, he shall take every step in his power to re-establish and secure, as far as possible, public safety and social order.

"Art. 3. With this object he will maintain the laws which were in force in the country in time of peace, and will only

modify, suspend, or replace them by others if necessity obliges him to do so.

“ Art. 4. The functionaries and officials of every class who, at the instance of the occupier, consent to continue to perform their duties, shall be under his protection. They shall not be dismissed or be liable to summary punishment (*punis disciplinairement*) unless they fail in fulfilling the obligations they have undertaken, and shall be handed over to justice only if they violate those obligations by unfaithfulness.

“ Art. 5. The army of occupation shall only levy such taxes, dues, duties, and tolls as are already established for the benefit of the State, or their equivalent, if it be impossible to collect them, and this shall be done as far as possible in the form of and according to existing practice. It shall devote them to defraying the expenses of the administration of the country to the same extent as was obligatory on the legal Government.

“ Art. 6. The army occupying a territory shall take possession only of the specie, the funds, and bills, &c. (*valeurs exigibles*), which are the actual property of the State; the depots of arms, means of transport, magazines, and supplies, and, in general, all the personal property of the State, which may be of service in carrying on the war.

“ Railway plant, land telegraphs, steam and other vessels, not included in cases regulated by maritime law, as well as depots of arms, and generally every kind of munitions of war, although belonging to companies or to private individuals, are to be considered equally as means of aid in carrying on a war, which cannot be left at the disposal of the enemy. Railway plant, land telegraphs, as well as the steam and other vessels above mentioned, shall be restored, and indemnities be regulated on the conclusion of peace.

" Art. 7. The occupying State shall only consider itself in the light of an administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied territory. It is bound to protect these properties (*fonds de ces propriétés*), and to administer them according to the laws of usufruct.

" Art. 8. The property of parishes (*communes*), of establishments devoted to religion, charity, education, arts, and sciences, although belonging to the State, shall be treated as private property.

" Every seizure, destruction of, or wilful damage to such establishments, historical monuments, or works of art, or of science, should be prosecuted by the competent authorities."

ORIGINAL PROJECT.

" CHAPTER II.—*Of those who are to be recognised as Belligerents ; of Combatants and Non-Combatants.*

" § 9. The rights of belligerents shall not only be enjoyed by the army, but also by the militia and volunteers in the following cases : 1. If, having at their head a person responsible for his subordinates, they are at the same time subject to orders from headquarters ; 2. If they wear some distinctive badge, recognisable at a distance ; 3. If they carry arms openly ; and 4. If, in their operations, they conform to the laws, customs, and procedure of war. Armed bands not complying with the above-mentioned conditions shall not possess the rights of belligerents ; they shall not be considered as regular enemies, and in case of capture shall be proceeded against judicially.

“§ 10. The armed forces of belligerent States are composed of combatants and non-combatants. The first take an active and direct part in warlike operations; the second, though forming part of the army, belong to different branches of the military organisation; such are those ministering to religious wants, the medical and control departments, the administration of justice, or those who may be attached to the army. In case of capture by the enemy, non-combatants shall enjoy equally with the first, the rights of prisoners of war; doctors, the auxiliary *personnel* of the ambulances, and clergymen, enjoy, moreover, the rights of neutrality.” (See below, § 38.)

Résumé of Discussion.

The discussions on this chapter commenced by the president proposing, and the committee agreeing to the suppression of the last part of Article 9.

The conditions to be complied with by militia and volunteers, in order to secure to them the rights of belligerents, were then discussed.

Condition 1. If, having at their head a person responsible for his subordinates, they are at the same time subject to orders from headquarters.

The German delegate who supported this condition, after alluding to the dangers to which a country would be exposed from the existence within its territory of an unorganised and undisciplined force, which might prefer marauding and plundering its own countrymen to marching against the enemy, pointed out that the hypothesis of a force without a commander was inadmissible—that there would always be the mayor, or some respectable citizen, who would be selected

by his fellow-citizens for this post; and in reply to the Austrian delegate, who remarked on the difficulty of making bands of volunteers subject to orders from headquarters on account of their being in most cases a local force, General Voigts-Rhetz declared that the important point was that such men should have a responsible chief, and, moreover, one cognisant with the laws of war.

Condition 2. If they wear some distinctive badge, recognisable at a distance.

In reply to a question raised by the Swedish delegate as to whether this condition implied wearing a uniform, the president stated that the text of the project made no mention of a uniform, but only of some distinctive badge which would distinguish the patriot who defends his country from the marauder who preys upon it.

The German delegate pointed out that there was no real difficulty attached to this condition, which was one as necessary to protect the inhabitants against bands of their own countrymen as against the enemy; and that nothing, in fact, would be easier than to fasten either a cross or a badge (*brassard*) to the coat or cap. Such badge, however, he subsequently remarked, must not be removable.

The Swiss delegate, although not disapproving of the principle of this condition, pointed out the difficulty under certain circumstances of complying with it. A country, he said, might rise *en masse*, as Switzerland had formerly done to defend itself, without organisation and under no command. The patriotic feeling which led to such a rising could not be kept down; and although these patriots, if defeated, might not be treated as peaceful citizens, it could not be admitted in advance that they were not belligerents.

· *Condition 3.* "If they carry arms openly;" and

Condition 4. "If, in their operations, they conform to the laws, customs, and procedure of war" were not discussed; the latter condition being, however, reverted to at the next meeting, when chapter i., section 2, which treats of the military power with respect to private individuals, was discussed.

During the general discussion on the subject of this chapter, the Netherland delegate remarked, that if the plan laid down by the German delegate was to be sanctioned by the adoption of those articles which related to belligerents, as drawn up in the project, it would either have the effect of diminishing the defensive power of the Netherlands, or would render universal and obligatory service necessary, a system to which public opinion in the Netherlands was still opposed. He therefore stated that, in taking part in the discussion, he reserved more than ever the opinion of his Government, even on the supposition, as expressed by Baron Jomini, that the deliberations of the Conference are only to be looked on in the light of an inquiry, the result of which is to be laid before the respective Governments.

The Belgian delegate made a declaration to the effect that Belgium would examine the project, but that she undertook no engagement as to the conclusions such examination might lead to.

At the last meeting but one of the committee, Baron Lambertont stated that he considered it necessary to have recorded in the protocol that the committee had come to no conclusion on two questions—viz., What would be the fate of a citizen who, acting of his own accord, and in a non-occupied part of his country, should commit hostile acts, such as are intended to impede the advance of the enemy? and whether, and under

what conditions, a population rising in arms in an occupied district can lay claim to the rights accorded to belligerents?

No decision, he remarked, having been arrived at on these two questions, they must still be governed by the unwritten law of nations.

Subsequently, at the fourth meeting of the full Conference, held on the 26th ultimo, General Leer, the second Russian delegate, stated what the views of his Government were with regard to the rights, duties, and interests of the attacking State, and of the State attacked, in connection with a *levée en masse*.

The party attacked, he observed, has the incontestable right of defence, without any restriction whatever. This right is a sacred one, which the Russian Government has never had any idea of restraining in any manner whatsoever. But, coexisting with this right, is the duty of the party attacked to act in conformity with the laws and usages of war, so as to prevent the struggle becoming savage and barbarous. It was the interest, he added, of the party attacked that his defence should be organised, both for the sake of his internal security, and with the view of calling on the aggressor himself to act in conformity with the laws and usages of war.

The duty of the aggressor is to respect national defence as long as that defence is in conformity with the laws of war, and it is his interest that such defence be regulated, in order that he may avoid having recourse to severe measures, which the violation of the laws and usages of war would inevitably compel him to take. If, however, the defenders fail in their duty, the aggressor has the right to release himself from observing the laws and customs of war in such proportion as is required for his own safety. The Russian delegate con-

cluded by observing that such is the sense, in the opinion of his Government, of the final text of the project, and that he felt convinced that the various opinions which had been expressed on this subject might be reconciled.

The following modified text of chapter ii. was finally adopted by the Conference :—

Modified Text.

“ Art. 9. The laws, rights, and duties of war are applicable not only to the army, but likewise to militia and corps of volunteers complying with the following conditions :—

“ 1. That they have at their head a person responsible for his subordinates ;

“ 2. That they wear some settled distinctive badge, recognisable at a distance ;

“ 3. That they carry arms openly ; and

“ 4. That, in their operations, they conform to the laws and customs of war.

“ In those countries where the militia form the whole or part of the army, they shall be included under the denomination of ‘ army.’

“ Art 10. The population of a non-occupied territory, who, on the approach of the enemy, of their own accord take up arms to resist the invading troops, without having had time to organise themselves in conformity with Article 9, shall be considered as belligerents, if they respect the laws and customs of war.

“ Art. 11. The armed forces of the belligerents may be composed of combatants and non-combatants. In the event of being captured by the enemy, both one and the other shall enjoy the rights of prisoners of war.”

ORIGINAL PROJECT.

“ CHAPTER III.—*Of the means of injuring the Enemy ; of those which are permitted or should be forbidden.*

“ § 11. The laws of warfare do not allow to belligerents an unlimited power as to the choice of means to be reciprocally employed.

“ § 12. According to this principle are forbidden—

“(a) The use of poisoned weapons, or the diffusion, by any means whatever, of poison in the enemy's territory.

“(b) Murder by treachery of individuals belonging to the hostile army.

“(c) Murder of an antagonist who has laid down his arms, or who has no longer the means of defending himself. As a rule, the hostile parties have no right to declare that they will not give quarter ; such an extreme measure is only admissible as a reprisal for previous acts of cruelty, or as an unavoidable step to prevent their own destruction. Armies that do not give quarter have no right to claim it for themselves.

“(d) The threat of extermination towards a garrison which obstinately holds a fortress.

“(e) The use of arms occasioning uncalled-for suffering, or the employment of projectiles filled with powdered glass, or of substances calculated to inflict unnecessary pain.

“(f) The use of explosive balls of less than 400 grammes weight, charged with inflammable substances.

“ § 13. Amongst the means of warfare which are permitted are—

“(a) Every operation of war by the army or by detached bodies, such as ambuscades, skirmishing, &c.

“(b) The seizure or destruction of everything that is necessary to the enemy in order to carry on the war, or of that which may add to his strength.

“(c) The destruction of everything that hinders the success of warlike operations.

“(d) Every species of warlike stratagem; but whoever makes use of the enemy's national flag, his military insignia, or his uniform, with a view to deceive him, deprives himself thereby of the protection of the laws of war.

“(e) The employment of every available means of procuring information about the enemy and the country.”

Résumé of Discussion.

This chapter has been rewritten and rearranged. The discussion upon it did not, however, present any points of interest. The only noticeable feature in the version accepted is the extension to civilians of the hostile nation of the protection afforded by (b), Art. 12, which forbids murder by treachery.

The following is the modified text adopted by the Conference :—

Modified Text.

“ Art. 12. The laws of war do not allow to belligerents an unlimited power as to the choice of means of injuring the enemy.

“ Art. 13. According to this principle are strictly forbidden—

“(a) The use of poison or poisoned weapons.

“(b) Murder by treachery of individuals belonging to the hostile nation or army.

“(c) Murder of an antagonist who, having laid down his arms, or having no longer the means of defending himself, has surrendered at discretion.

“(d) The declaration that no quarter will be given.

“(e) The use of arms, projectiles, or substances (*matières*) which may cause unnecessary suffering, as well as the use of the projectiles prohibited by the Declaration of St Petersburg in 1868.

“(f) Abuse of the flag of truce, the national flag, or the military insignia or uniform of the enemy, as well as the distinctive badges of the Geneva Convention.

“(g) All destruction or seizure of the property of the enemy which is not imperatively required by the necessity of war.

“Art 14. Stratagems (*ruses de guerre*), and the employment of means necessary to procure intelligence respecting the enemy or the country (*terrain*) (subject to the provisions of Art. 36), are considered as lawful means.”

ORIGINAL PROJECT.

“CHAPTER IV.—*Of Sieges and Bombardments.*”

“§ 14. Fortresses or fortified towns are alone liable to be besieged. An entirely open town, which is not defended by hostile troops, and whose inhabitants offer no armed resistance, is free from attack or bombardment.

“§ 15. But if a town be defended by the enemy's troops, or by the armed inhabitants, the attacking army, before commencing the bombardment, should previously give notice thereof to the authorities of the town.

“§ 16. The commander of a besieging army, when bom-

barding a fortified city, should take all the steps in his power to spare, as far as possible, churches and artistic buildings, as also those devoted to science and charity.

"§ 17. A town taken by storm should not be given up to the victorious troops for plunder."

Résumé of Discussion.

In the course of the discussion which took place on this chapter the Belgian delegate presented a petition addressed to the Belgian Government by the inhabitants of Antwerp against the bombardment of inhabited quarters, even of fortified towns.

The German delegate, General Voigts-Rhetz, requested that it might be laid down in the protocol that bombardment being one of the most efficacious means of attaining the object of a war, it would be impossible to yield to the wishes of petitioners.

At the next meeting the president read a paper he had drawn up, which was, with some alterations, subsequently recorded in Protocol 17, relative to the Antwerp petition, with the view of giving satisfaction to those interested in the matter, without diminishing in any way the rights of war.

Baron Jomini proposed that an answer in the sense of this paper should be returned to the Antwerp petition.

This document, after pointing out that it is laid down in § 2 of the General Principles of the Russian Project that "operations of war must be directed exclusively against the forces and the means of making war of the hostile State, and not against its subjects, so long as the latter do not themselves take any active part in the war," states that these principles prove that the Conference is already moved by the humane

desire expressed by the petitioners, and that the object of the deliberations of the Conference is to seek every practical means of carrying out that idea, and that it is to be hoped that these principles will, in the future, conduce to the realisation of that object. That, in the meantime, the Conference is confident that the commander of every civilised army, conforming to the principles which the Brussels Conference is desirous of sanctioning by an international Act, will always consider it a sacred duty to take every step in his power, in the case of the siege of a fortified town, to cause private property belonging to inoffensive citizens to be respected, as far as local circumstances and the necessities of war will admit.

The question of answering the Antwerp petition having been left open, Baron Lambertmont pointed out, at the fourth meeting of the committee, on the 3d August, that the Conference had only to decide on the merits of the question involved in the Antwerp petition, and that later, when the resolutions arrived at by the Congress were published, it would be the duty of the Belgian Government to reply to that petition.

The German delegate, in calling attention to a previous remark of the Italian delegate on the subject of "investments," demanded the insertion in the project of a clause authorising the commander of an investing force to refuse to allow the inhabitants of the place to quit it after the investment is effected. It might, he observed, happen that during the siege the commandant, either to husband the resources of the place, or to hamper the besieger, might turn out all persons who could not assist in the defence. The position of these unfortunate people, if the besieger refused to receive them, as might

possibly be his duty, would be a cruel one. The case might, in his opinion, be met by the insertion of a provision dealing with it.

At the instance of the French delegate, who considered such a case unlikely to occur, General Voigts-Rhetz withdrew his proposition.

The following modified text of chapter iv. was finally adopted by the Conference :—

Modified Text.

“ Art. 15. Fortified places are alone liable to be besieged. Towns, agglomerations of houses or villages, which are open and undefended, cannot be attacked or bombarded.

“ Art. 16. But if a town or fortress, agglomeration of houses, or village be defended, the commander of the attacking forces should, before commencing a bombardment, and, except in the case of surprise, do all in his power to warn the authorities.

“ Art. 17. In the like case all necessary steps should be taken to spare, as far as possible, buildings devoted to religion, arts, sciences, and charity, hospitals and places where sick and wounded are collected, on condition that they are not used at the same time for military purposes.

“ It is the duty of the besieged to indicate these buildings by special visible signs to be notified beforehand by the besieged.

“ Art. 18. A town taken by storm should not be given up to the victorious troops to plunder.”

ORIGINAL PROJECT.

" CHAPTER V.—*Of Spies.*

" § 18. The individual who, acting independently of his military duties, secretly collects information in districts occupied by the enemy, with the intention of communicating it to the opposing force, is considered as a spy.

" § 19. A spy, if taken in the act, is to be handed over to justice, even though his intention may not have been definitely accomplished, or crowned with success.

" § 20. Any inhabitant of the country occupied by the enemy communicating information to the opposing force, is to be likewise handed over to justice.

" § 21. If a spy, who, after successfully performing his mission, rejoins the army to which he is attached, and is subsequently captured by the enemy, he is to be treated as a prisoner of war, and incurs no responsibility for his previous acts.

" § 22. Officers or soldiers who have penetrated within the limits of the sphere of operations of the enemy's army, with the intention of collecting information, are not considered as spies, if it has been possible to recognise their military character. In like manner, officers or soldiers (and also non-military persons performing their mission openly) charged with the transmission of despatches, whether written or verbal, from one part of the army to another, are not considered as spies if captured by the enemy.

" *Note.*—To this class belong also individuals captured in balloons, who are charged with despatches, and generally with keeping up the communications between different parts of an army."

Résumé of Discussion.

Spies, as a class, were by no means without protectors and advocates at the Conference. The danger to which an army is exposed by the enemy obtaining information through spies was, perhaps, not fully realised by some of the delegates, who failed to see that the punishment inflicted on spies is intended simply to be deterrent.

The objections raised by the Netherland and Belgian delegates to the phrase "livrés à la justice," in Article 19, are worthy of notice. These gentlemen urged the suppression of the article on the ground that to accept it would be to acknowledge foreign jurisdiction over the population of their countries.

Article 20 was suppressed in conformity with the unanimous opinion of the committee.

On Article 21 a discussion ensued, whether the exemption from punishment provided in it extended to civilians. Considerable difference of opinion was manifested on the subject, and the question was eventually left open.

The following modified text of this chapter was afterwards adopted by the Conference :—

Modified Text.

" Art. 19. No one shall be considered as a spy but those who, acting secretly or under false pretences, collect, or try to collect information in districts occupied by the enemy with the intention of communicating it to the opposing force.

" Art. 20. A spy, if taken in the act, shall be tried and treated according to the laws in force in the army which captures him.

" Art. 21. If a spy, who rejoins the army to which he belongs is subsequently captured by the enemy, he is to be treated as a prisoner of war, and incurs no responsibility for his previous acts.

" Art. 22. Military men (*les militaires*) who have penetrated within the zone of operations of the enemy's army, with the intention of collecting information, are not considered as spies if it has been possible to recognise their military character.

" In like manner military men (and also non-military persons carrying out their mission openly), charged with the transmission of despatches either to their own army or to that of the enemy, shall not be considered as spies if captured by the enemy.

" To this class belong also, if captured, individuals sent in balloons to carry despatches, and generally to keep up communications between the different parts of an army, or of a territory."

ORIGINAL PROJECT.

" CHAPTER VI.—*Of Prisoners of War.*

" § 23. All combatants and non-combatants, forming part of such armed forces of the belligerents, as are recognised by law (chap. ii., §§ 9 and 10), with the exception of those non-combatants enumerated hereafter (chap. vii., § 38), are liable to be made prisoners of war.

" § 24. Persons who, though happening to be with an army, do not directly form part of it, as, for instance, correspondents, newspaper reporters, sutlers, contractors, &c., are liable to be made prisoners at the same time as that army.

“§ 25. Prisoners of war are not criminals but lawful enemies. They are in the power of the enemy's Government, but not of the individuals or of the corps who made them prisoners, and should not be subjected to any violence or ill-usage.

“§ 26. Prisoners of war are liable to detention within some town, fortress, or district, under an obligation not to go beyond certain fixed limits; but they must not be subjected to confinement like criminals.

“§ 27. Prisoners of war may be employed on certain public works, provided such employment be not excessive or humiliating to the rank and social position which they occupy in their own country, and, moreover, have no immediate connection with the operations of war undertaken against their country or its allies.

“§ 28. Prisoners of war cannot be compelled to take any part whatever in the prosecution of military operations.

“§ 29. The Government in whose power the prisoners of war happen to be undertakes to provide for their maintenance. The conditions of the maintenance of prisoners of war are determined by a mutual understanding between the belligerents.

“§ 30. A prisoner of war attempting to escape may lawfully be killed during the pursuit, but when once recaptured, or taken prisoner a second time, he is not liable to any punishment for his flight; he may only be subjected to a stricter surveillance.

“§ 31. Prisoners of war who have committed any offence during their captivity may be brought before the courts of justice and punished accordingly.

“§ 32. Any conspiracy set on foot by prisoners of war, with a view to a general escape, or directed against the estab-

lished authorities at the place where they are detained, is punishable according to military law.

"§ 33. Every prisoner of war is bound in honour to declare his true rank ; and in case of his infringing this rule, he incurs a curtailment of the rights granted to prisoners of war.

"§ 34. The exchange of prisoners of war depends entirely upon the convenience of the belligerents, and all conditions of such exchange are settled by mutual agreement.

"§ 35. Prisoners of war may be liberated on parole, if the laws of their country allow of it ; and in such a case they are bound on their personal honour to fulfil scrupulously as regards their own Government as well as that which made them prisoners, the engagements which they have contracted.

"§ 36. A prisoner of war cannot be compelled to pledge his word ; and, similarly, a belligerent Government cannot be compelled to release prisoners on parole.

"§ 37. Any prisoner of war released on parole, and again captured bearing arms against the Government to which he had pledged his word, is to be deprived of the rights of a prisoner of war, and brought before the military tribunals."

Résumé of Discussion.

At the second meeting of the full Conference on the 29th July, the president read a communication which he had received on the subject dealt with in this chapter from the Belgian Committee of the International Society for giving aid to Prisoners of War, and the Belgian delegate recommended this communication to the attention of the Conference.

At the fifth meeting of the committee it was, however, decided that projects from private societies could not be entertained as such, but that any delegate might bring them before the committee in his own name.

The Russian and Belgian delegates stated their intention to adopt this mode of proceeding on behalf of societies in their respective countries.

Some articles on the subject submitted by the Belgian delegate were considered simultaneously with the original project.

It will be observed that by a modification of Article 24 of the original project (No. 34 of the final text), all persons, civilians as well as military, in the vicinity of an army, are liable to be made prisoners of war. Otherwise the discussion on this subject did not present any features of importance.

There seemed, however, to be a general wish on the one hand to secure for prisoners humane treatment, and on the other, not to render their position so superior to that of the troops actually engaged in the campaign as to give a premium to misbehaviour or desertion.

Subsequently, at the later meetings of the committee and full Conference, this subject was again discussed with reference to the transport of prisoners of war across neutral territory. Observations on this part of the subject, together with the additional articles agreed to, will be found towards the close of this report.

The modified text of chapter vi., as accepted by the Conference, is as follows:—

Modified Text.

“ Art. 23. Prisoners of war are lawful and disarmed enemies. They are in the power of the enemy's Government but not of the individuals or of the corps who made them prisoners.

“ They should be treated with humanity.

“ Every act of insubordination authorises the necessary measures of severity to be taken with regard to them.

“ All their personal effects, except their arms, are considered to be their own property.

“ Art. 24. Prisoners of war are liable to internment in a town, fortress, camp, or in any locality whatever, under an obligation not to go beyond certain fixed limits ; but they may not be placed in confinement unless absolutely necessary as a measure of security.

“ Art. 25. Prisoners of war may be employed on certain public works which have no immediate connection with the operations on the theatre of war, provided the employment be not excessive, nor humiliating to their military rank, if they belong to the army, or to their official or social position, if they do not belong to it.

“ They may also, subject to such regulations as may be drawn up by the military authorities, undertake private work.

“ The pay they receive will go towards ameliorating their position, or will be put to their credit at the time of their release. In this case the cost of their maintenance may be deducted from their pay.

“ Art. 26. Prisoners of war cannot be compelled in any way to take any part whatever in carrying on the operations of the war.

“ Art. 27. The Government in whose power are the prisoners of war, undertakes to provide for their maintenance.

“ The conditions of such maintenance may be settled by a mutual understanding between the belligerents.

“ In default of such an understanding, and as a general

principle, prisoners of war shall be treated, as regards food and clothing, on the same footing as the troops of the Government who made them prisoners.

“ Art. 28. Prisoners of war are subject to the laws and regulations in force in the army in whose power they are.

“ Arms may be used, after summoning, against a prisoner attempting to escape. If retaken, he is subject to summary punishment (*peines disciplinaires*) or to a stricter surveillance.

“ If after having escaped he is again made prisoner, he is not liable to any punishment for his previous escape.

“ Art. 29. Every prisoner is bound to declare, if interrogated on the point, his true names and rank; and in the case of his infringing this rule, he will incur a restriction of the advantages granted to the prisoners of the class to which he belongs.

“ Art. 30. The exchange of prisoners of war is regulated by mutual agreement between the belligerents.

“ Art. 31. Prisoners of war may be released on parole if the laws of their country allow of it; and in such a case they are bound on their personal honour to fulfil scrupulously, as regards their own Government, as well as that which made them prisoners, the engagements they have undertaken.

“ In the same case their own Government should neither demand nor accept from them any service contrary to their parole.

“ Art 32. A prisoner of war cannot be forced to accept release on parole, nor is the enemy's Government obliged to comply with the request of a prisoner claiming to be released on parole.

“ Art. 33. Every prisoner of war liberated on parole, and

retaken carrying arms against the Government to which he had pledged his honour, may be deprived of the rights accorded to prisoners of war, and may be brought before the tribunals.

“ Art. 34. Persons in the vicinity of armies, but who do not directly form part of them, such as correspondents, newspaper reporters, *vivandiers*, contractors, &c., may also be made prisoners of war.

“ These persons should, however, be furnished with a permit, issued by a competent authority, as well as with a certificate of identity.”

ORIGINAL PROJECT.

“ CHAPTER VII.—*Of Non-Combatants and Wounded.*

“ § 38. Clergymen, physicians, apothecaries, and assistant-surgeons, remaining with the wounded on the field of battle, as well as all actual attendants in military hospitals and field-ambulances, cannot be made prisoners of war ; they enjoy the rights of neutrality, provided they take no active part in the operations of war.

“ § 39. The sick and wounded who have fallen into the enemy's hands are considered as prisoners of war, and treated in accordance with the Convention of Geneva and the following additional articles.

“ § 40. The neutrality of hospitals and ambulances ceases if the enemy use them for warlike purposes ; but the fact that they are protected by a picket or sentinels shall not deprive them of their neutrality ; the picket or sentinels, if captured, are alone held to be prisoners of war.

“ § 41. Persons enjoying the rights of neutrality, and who are reduced to the necessity of using arms in self-defence, do not thereby lose their rights as neutrals.

“§ 42. Belligerents are bound to lend their assistance to neutral persons who have fallen into their power, in order to obtain for them the enjoyment of the maintenance assigned to them by their Government, and, in case of need, to supply them with funds as an advance on account of such maintenance.

“§ 43. Wounded persons belonging to the enemy's forces, who, after recovery, are found incapable of taking an active part in the war, may be sent back to their own country. Wounded persons who do not come within this category may be retained as prisoners of war.

“§ 44. Non-combatants, who enjoy the rights of neutrality, should carry a distinctive badge, delivered to them by their Government, and, in addition, a certificate of identity.”

Résumé of Discussion.

After reading a circular addressed by M. Moynier, President of the International Committee of Geneva, to the president and members of the Central Committee for Affording Aid to the Wounded in War, and which relates to the Brussels Conference, Baron Jomini suggested that if the articles in chapter vii. of the Russian project were agreed to, they should be submitted to the various Governments as additional articles to the Convention, with which it was understood there was no question of meddling.

The German delegate having stated that he had prepared a draft of articles destined to replace those of the Russian project, and the delegates of Switzerland and Belgium having announced that they also intended bringing forward separate projects, it was decided that a sub-committee, consisting of General Leer for Russia, Baron de Soden for Germany, Colonel Hammer for Switzerland, Baron Lambermont for Belgium, and

Colonel Staaff for Sweden, should be appointed for the purpose of consolidating these different projects, and of drawing up one scheme which should include, and if necessary reconcile, the various points contained in the several projects.

When, however, the scheme of the sub-committee was submitted to the committee, General Voigts-Rhetz, the first German delegate, objected to it on the ground that it had been decided that chapter vii. should be treated apart from the Russian project, and form a distinct chapter, it being clearly understood that the Geneva Convention should in no way be compromised. He then pointed out that the scheme of the sub-committee modified that Convention, and that if the Conference were to accept this scheme it must denounce the Convention.

If, however, the Conference were to draw up a project independent of the Convention, such project might be hereafter discussed at a future Conference. He further pointed out that clauses embarrassing to the military had been left in the project, and that others, which do not exist in the Geneva Convention, had been introduced.

He added that, in his opinion, there was nothing to prevent the Conference drawing up a certain number of clauses which might replace the Geneva Convention if all the Governments agreed to this course.

Baron Jomini consented to the suppression of chapter vii., and to the eventual drawing up of a special chapter, the clauses of which might be submitted to the International Committee of Geneva as additional articles to the Convention; but it would be impossible, he remarked, in a project which had for its object the relief of suffering arising from war, not to deal with the question of the wounded.

The president further pointed out that the Geneva Society object, with good reason, to being placed in the future under three jurisdictions—viz., the Geneva Convention, the additional articles to that Convention, and the future Convention of Brussels—an objection which would no longer exist if chapter vii. be separated from the rest of the project.

After recording that the meeting had agreed not to meddle with the Geneva Convention, and that it had therefore become necessary to strike out chapter vii. from the Russian project, M. de Lansberge suggested that that chapter might yet be preserved by the insertion of a single clause to the effect that the sick and wounded should be treated conformably with the stipulations of the Geneva Convention, and the modifications which may hereafter be introduced into that Convention.

This suggestion was approved of, as well as a further proposition of M. de Lansberge, that it would be advisable to take advantage of the military element represented at the Congress with the view of pointing out, by means of an additional Act, to be regarded only in the light of a recommendation which might be of service in any future revision of the Geneva Convention, the omissions and defects in that Convention.

The ninth meeting of the committee was accordingly devoted to recording the various military opinions as to the working of the Geneva Convention. These opinions were so different that it is difficult to see how the committee could have arrived at any other decision on the subject than that which it accepted at the suggestion of the President—viz., that the committee confine themselves to submitting the various opinions expressed at the meeting to their respective Governments, with the view of pointing out the modifications and ameliorations to be in-

troduced, after a general agreement on the subject, into the Geneva Convention.

The principal point raised in the discussion was the neutrality of the equipment (*matériel*) of ambulances and hospitals. General Voigts-Rhetz asserted that the word "ambulance," in Article 1 of the Convention, was intended to apply only to the small ambulances (*petites ambulances*) which follow the army in first line, the military hospitals (*hauptfeldlazarethe*) mentioned in Article 4, as liable to capture, being differently organised; but that since the conclusion of the Geneva Convention in 1864, the hospital organisation in most armies has been altered, and that no distinction now exists between the two kinds of ambulance, and that, therefore, the first line should be equally liable to capture with the reserves.

General Voigts-Rhetz further called attention to the fact, that the burden of taking care of the wounded on both sides usually devolves on the victorious party; and if this army is obliged to give up the ambulances which fall into its hands, its own wounded suffer in consequence. That, moreover, when an army is advancing, it is very difficult to keep its ambulances up with it; and, added the German delegate (in support of his argument that the *matériel* of all ambulances should be liable to capture), the reports of the officers commanding German army corps all agree as to the great inconvenience experienced when the equipment of the hospitals has to be given up.

It was pointed out, in reply, that if the ambulances on the field of battle are liable to capture, private societies, being thus exposed to the loss of their equipment, will be no longer willing to give their aid in attending to the sick and wounded.

Passing on to other matters connected with the Geneva

Convention, the committee expressed the opinion that persons belonging to private societies should wear a distinctive badge, be provided with a certificate of identity, as well as with a properly authorised permit.

The inconvenience arising from the provisions of Article 3, by which the *personnel* of the ambulance can quit the sick and wounded under their charge in the enemy's lines, and can claim to be sent back direct to the outposts of their own army, was admitted.

Notice was also taken of the abuses which are likely to arise from the advantages accorded to persons receiving even a single wounded man into their houses.

Objections were also raised to the provisions in Article 6, which places the party capturing wounded under the obligation of sending them back to their own country in every case, on condition that they do not again bear arms during the continuance of the war. In the opinion of the German delegate, this provision was too vague.

Lastly, both the German and French delegates described abuses which had been practised under cover of the "red cross." They especially mentioned cases where persons had made use of the protection afforded by the badge, to enable them to plunder the sick and wounded.

The committee, whilst energetically reprobating these crimes, suggested that wearers of the "red cross" might be furnished with a certificate of identity of recent date, to which might be affixed their signature, and even their photographic portrait.

A very practical suggestion, which is, I consider, well worthy of consideration by the military authorities, was made in the course of the discussion of these questions, by

Colonel Brun, one of the Danish delegates, to the following effect :—

After an engagement, the belligerents are to communicate to each other a list of the killed and wounded who have fallen into their hands ; and to facilitate this measure each soldier should carry about him something showing the regiment and company to which he belongs, as well as his regimental number.

I understand that this practice is universal in the German army.

The text finally adopted, in lieu of chapter vii. of the Russian project, is as follows :—

Modified Text.

“ Art. 35. The duties of belligerents, with regard to the treatment of sick and wounded, are regulated by the Convention of Geneva of the 22d August 1864, subject to the modifications which may be introduced into that Convention.”

ORIGINAL PROJECT.

“ SECTION II.—*Of the Rights of Belligerents with reference to Private Individuals.*

“ CHAPTER I.—*Of the Military Power with respect to Private Individuals.*

“ § 45. The inhabitants of a district not already occupied by the enemy, who shall take up arms in the defence of their country, ought to be regarded as belligerents, and if captured should be considered as prisoners of war.

“ § 46. Individuals belonging to the population of a country, in which the enemy's power is already established, who shall

rise in arms against them, may be handed over to justice, and are not regarded as prisoners of war.

“ § 47. Individuals who at one time take part independently in the operations of war, and at another return to their pacific occupations, not fulfilling generally the conditions of §§ 9 and 10, do not enjoy the rights of belligerents, and are amenable, in case of capture, to military justice.

“ § 48. So long as a province, occupied by the enemy, is not ceded to him by virtue of a treaty of peace, the inhabitants thereof cannot be forced either to take part in the operations of war against their legitimate Government, or in acts of such a nature as to further the prosecution of the objects of the war, to the detriment of their own country.

“ § 49. The inhabitants of districts occupied by the enemy cannot be compelled to take the oath of perpetual fidelity to the hostile Power.

“ § 50. The religious convictions, the honour, the life, and the property of the non-combatant portion of the population should be respected by the enemy's army.

“ § 51. The troops should respect private property in the occupied territory, and in no case destroy it without pressing necessity.”

Résumé of Discussion.

The president, having prepared a modified text of this chapter, which he had communicated to the delegates, General Voigts-Rhetz, the German delegate, proposed the following further modifications of Articles 45 and 46 :—

“ The inhabitants of a *de facto* occupied district, who have taken up arms against the established authority, are subject to the laws in force in the occupying army.

“ The inhabitants of a non-occupied district surprised by

the enemy, and spontaneously resisting the invading force, shall be treated as belligerents so long as they have not had time to organise themselves in conformity with Article 9, and so long as they act in accordance with the laws and customs of war."

He strongly urged the expediency of all defence being organised, and insisted on the necessity of a badge being worn by the inhabitants of an invaded country who might rise *en masse* as being the only practical means of showing whether they are or are not organised, and whether they are to be considered as legal enemies, or merely as men lying in ambush.

If a conspicuous badge be worn, remarked the German delegate, the enemy would see that the men they encountered were volunteers, citizens joining a *levée en masse*, &c., in which case they would treat them as belligerents; but if these men be not forced to adopt a measure of common prudence, but are given to understand that they have only to respect the laws and customs of war, they will be placed at the mercy of the enemy, who may at any time declare that they have not acted loyally, and the result would be that in the course of the war savage episodes would occur, followed by cruel reprisals.

The first part of the German delegate's proposal met with an indignant reply on the part of the Netherland, Belgian, and Swiss delegates.

In Baron Lansberge's opinion no country could possibly admit that, if a population of a *de facto* occupied district should rise in arms against the established authority of the invader, they should be subject to the laws of war in force in the occupying army. He admitted that in time of war the occupier might occasionally be forced to treat with severity a

population who might rise, and that, from its weakness, the population might be forced to submit ; but he repudiated the idea of any Government contemplating delivering over in advance to the justice of the enemy those men who, from patriotic motives, and at their own risk, expose themselves to all the dangers consequent upon a rising.

Baron Lambermont, replying in the same sense as the Netherland delegate, concluded by saying that, if citizens were to be sacrificed for having attempted to defend their country at the peril of their lives, they need not find inscribed on the post at the foot of which they are about to be shot, the article of a treaty signed by their own Government, which had in advance condemned them to death.

Colonel Hammer, the Swiss delegate, who had previously pointed out that Articles 45 and 9 (respecting conditions to be fulfilled by armed forces) were the cardinal points of the whole project, openly declared that two questions diametrically opposed to each other were before the committee : the conduct and interests, on the one hand, of great armies in an enemy's country, who insist on security for their communications, and for the extent of the country occupied ; and, on the other hand, of the invaded, which cannot admit that a population should be handed over as criminals to justice for having taken up arms against the enemy. A reconciliation of these conflicting interests was, in his opinion, impossible in the case of a *levée en masse* in an occupied country.

In the face of the opposite opinions expressed on the articles above-mentioned, a provisional modification was accepted by the meeting, and the following modified text of chapter i. section 2, was finally adopted by the Conference :—

Modified Text.

" Art 36. The population of an occupied territory cannot be compelled to take part in military operations against their own country.

" Art 37. The population of occupied territories cannot be compelled to swear allegiance to the enemy's power.

" Art. 38. The honour and rights of the family, the life and property of individuals, as well as their religious convictions and the exercise of their religion, should be respected.

" Private property cannot be confiscated.

" Art. 39. Pillage is expressly forbidden."

ORIGINAL PROJECT.

" CHAPTER II.—Of Requisitions and Contributions.

" § 52. The enemy may exact from the local population all the taxes, labour, and dues, both in money and in kind, to which the armies of the legal Government have a right.

" § 53. The army of occupation may exact from the local population all articles of provisions, clothing, boots, &c., necessary for its maintenance. In such a case the belligerent is bound, as far as possible, either to indemnify the persons giving up their property, or else to give them the customary receipts.

" § 54. The enemy may levy money contributions on the population of the country of which he is in possession, either in case of absolute and inevitable necessity, or by way of penalty; but in the one case, as well as in the other, only by virtue of a decision of the commander-in-chief, and care being taken, besides, to avoid ruining the population.

"The sums of money levied on the population in the first case may be liable to restitution."

Résumé of Discussion.

On the important subjects treated in this chapter, several projects were submitted to the committee, which decided that priority of consideration should be accorded to that formulated by General Voigts-Rhetz, the German delegate, and which differed from the Russian project in the following particulars:—

It commenced by formally declaring the respect due to private property, a statement which was found in Article 51 of the Russian project, but which had disappeared from a later modification submitted for discussion.

It enlarged the extent to which payments (*prestations*) and personal services can be exacted from the population of an occupied country, and includes among them all which are of a "nature to contribute to the attainment of the object of the war;" whereas in the Russian project the invading army could not demand more than the army of the country invaded would have the right to exact.

The German version omits to specify what articles may be requisitioned. It claims the aid of local official assistance in levying the money contributions, and adds that this burden should be distributed according to the rules of taxation in force in the occupied territory.

The right to levy money contributions is extended to the principal civil authority established by the enemy in the territory. Lastly, it omits all reference to the restitution of money payments.

In the discussions which ensued, three principles for regulating the levy of requisitions and contributions found advocates:

1. They shall be levied to the same extent as the national defending army has the right to demand from its own country.
2. They shall be levied to the same extent as the invading army has the right to demand from its own country.
3. The extent to which they shall be levied shall be determined solely by the necessities of war.

As regards the first, the same arguments were used as were brought forward when the committee was dealing with the question of taxation.

The second found advocates on the ground that it would necessarily limit the exactions of an invader, and would sanction the right to indemnity, if this right were already recognised for the citizens of the invader's country.

It was objected that under this system foreign legislation, would be introduced into the invaded country; and, moreover, that the variety of codes would render the application of the system inequitable.

The third was that which received the support of the first German delegate, and was in fact the only one to which he would assent.

General Voigts-Rhetz pointed out that on the subject of requisitions it is impossible to go into details. Abuses must always occur, but by the adoption of general principles their number may be diminished. As regards the "services" mentioned in the projects, he said that the word included those of farriers, smiths, carmen, and workmen generally, subject to the restriction contained in the 48th Article (36th of the modified text) which exempts the population of an occupied territory from taking part in military operations against their own country.

To diminish the losses to which the population of the in-

vaded country is subjected, suggestions were made by some of the delegates with a view of rendering the value of all "receipts" a reality instead of a fiction, as is so often the case in practice.

To secure this end it was proposed that the receipts should be regarded as bills to be paid by the party giving them, whether he were the invader or invaded. Such a rule, it was asserted, would render the march of an army through a country far less oppressive to the inhabitants than it is at present, inasmuch as an officer making a requisition would be checked in his demands by the reflection that the more he requisitions, the heavier will be the burden ultimately to be discharged by his own country.

The obvious reply was that it is usually the conquered and not the conqueror who makes good war losses; that it would be impossible to admit unlimited liability for the payment of "receipts," the authenticity of which could never be verified; and that on service no officer would be for one moment restrained in his action by ulterior pecuniary considerations of the character referred to.

The imposition of pecuniary contributions also met with opposition, as was the case with the imposition of fines, unless the latter were subject to regulation.

As regards pecuniary contributions, it was pointed out, however, that when an army is passing through a town and remaining there perhaps for only one night, it is next to impossible to make a requisition in any other shape. Besides, with regard to some things requisitioned—cattle, for instance—these can generally be obtained only from the rural districts; and if requisitions were to be made in kind only, the towns might escape their fair share of the burden.

As regards the imposition of fines, General Voigts-Rhetz deeming the suppression of the words permitting the practice to be out of the question, and other delegates being as strongly opposed to their retention without qualification, it was determined to retain the words in the project, entering the dissentient opinions in the protocol.

In the course of a conversation subsequent to this discussion, the Swiss delegate demurred to the idea that the project and the protocol were equally authoritative.

In reply General Voigts-Rhetz declared, and his statement was uncontradicted, that the protocol is absolutely necessary for the interpretation of the project.

The Russian delegate on another occasion expressed a similar opinion.

As regards this chapter generally, the committee found it impossible to arrive at any agreement, and the same course was adopted as that just mentioned—viz., accepting a certain reading in the project, and entering the dissentient opinions in the protocol.

The following is the text of chapter ii., section 2, finally adopted by the Conference:—

Modified Text.

“ Art. 40. As private property should be respected, the enemy will demand from parishes (*communes*) or the inhabitants, only such payments and services as are connected with the necessities of war generally acknowledged in proportion to the resources of the country, and which do not imply, with regard to the inhabitants, the obligation of taking part in the operations of war against their own country.

" Art. 41. The enemy, in levying contributions, whether as equivalents for taxes (*vide* Article 5), or for payments which should be made in kind, or as fines, will proceed, as far as possible, according to the rules of the distribution and assessment of the taxes in force in the occupied territory.

" The civil authorities of the legal Government will afford their assistance, if they have remained in office.

" Contributions can be imposed only on the order and on the responsibility of the General-in-chief, or of the superior civil authority established by the enemy in the occupied territory.

" For every contribution a receipt shall be given to the person furnishing it.

" Art. 42. Requisitions shall be made only by the authority of the commandant of the locality occupied.

" For every requisition an indemnity shall be granted, or a receipt given."

ORIGINAL PROJECT.

" SECTION III.—*Of Relations between Belligerents.*

" CHAPTER I.—*Of Modes of Communication and Envoys.*

" § 55. All communication between districts occupied by the belligerents ceases, and cannot be permitted except by the military authorities, to such extent as they may consider indispensable.

" § 56. The diplomatic and consular agents of neutral Powers have the right of demanding from the belligerent parties authority to quit, without hindrance, the theatre of the operations of war; but, in case of absolute military necessity, the satisfaction of such demands may be postponed to a more opportune moment.

“ § 57. Individuals authorised by one of the belligerents to confer with the other, on presenting themselves with a white flag, and accompanied by a trumpeter (bugler or drummer), shall be recognised as the bearer of a flag of truce, and shall have the right of personal security.

“ § 58. The commander of the army to which a bearer of a flag of truce is despatched is not obliged to receive him under all circumstances and conditions. It is equally lawful for him to take all measures necessary for preventing the bearer of a flag of truce from taking advantage of his stay within the radius of the enemy's positions to the prejudice of the latter.

“ § 59. If the bearer of a flag of truce presents himself in the enemy's lines during a battle, and is wounded or killed, it shall not be considered as a violation of law.

“ § 60. The bearer of a flag of truce loses his right of inviolability if it be proved in a positive and irrefutable manner that he has taken advantage of his privileged position to collect information or to incite to treachery.”

Résumé of Discussion.

Although the revised chapter differs considerably from the original project, the discussion which led to the alterations adopted did not contain any points worthy of special notice.

The following modified text of this chapter was finally adopted by the Conference :—

Modified Text.

“ Art. 43. An individual authorised by one of the belligerents to confer with the other, on presenting himself with

a white flag, accompanied by a trumpeter (bugler or drummer), or also by a flag-bearer, shall be recognised as the bearer of a flag of truce. He, as well as the trumpeter (bugler or drummer), and the flag-bearer, who accompany him, shall have the right of inviolability.

" Art. 44. The commander to whom a bearer of a flag of truce is dispatched, is not obliged to receive him under all circumstances and conditions.

" It is lawful for him to take all measures necessary for preventing the bearer of the flag of truce taking advantage of his stay within the radius of the enemy's position, to the prejudice of the latter; and if the bearer of the flag of truce is found guilty of such a breach of confidence, he has the right to detain him temporarily.

" He may equally declare beforehand that he will not receive bearers of flags of truce during a certain period. Envoys presenting themselves after such a notification from the side to which it has been given, forfeit their right of inviolability.

" Art 45. The bearer of a flag of truce forfeits his right of inviolability, if it be proved in a positive and irrefutable manner that he has taken advantage of his privileged position to incite to, or commit an act of treachery."

ORIGINAL PROJECT.

" CHAPTER II.—*Of Capitulations.*

" § 61. The conditions of capitulations depend upon an understanding between the contracting parties. When once settled by a convention, they should be scrupulously observed by both sides."

Résumé of Discussion.

The discussion which led to the alterations in this chapter did not contain any point worthy of special notice.

The following modified text was finally adopted by the Conference :—

Modified Text.

“ Art. 46. The conditions of capitulations shall be settled by the contracting parties.

“ These conditions should not be contrary to military honour.

“ When once settled by a convention they should be scrupulously observed by both sides.”

ORIGINAL PROJECT.

“ CHAPTER III.—*Of Armistices, &c.*

“ § 62.—An armistice suspends warlike operations for a space of time fixed by mutual agreement between the belligerents. Should the space of time not be fixed, the belligerents may resume operations at any moment, provided, however, that proper warning be given to the enemy, in accordance with the conditions of the armistice.

“ § 63. On the conclusion of an armistice, what each of the parties may do, and what he may not do, shall be precisely defined.

“ § 64. An armistice may be general or local. The former suspends all warlike operations between the belligerents; the latter suspends them only between certain portions of the belligerent armies, and within the limits of a specified district.

"§ 65. An armistice comes into force from the moment of its being concluded. Hostilities cease immediately after its notification to the competent authorities.

"§ 66. It rests with the contracting parties to define the conditions upon which communications may be allowed between the populations of occupied provinces. Should the convention contain no clauses on this subject, the state of war is considered as still existing.

"§ 67. The violation of the clauses of an armistice by either one of the parties, releases the other from the obligation of carrying them out, and warlike operations may be immediately resumed.

"§ 68. The violation of the clauses of an armistice by private individuals, on their own personal initiative, only affords the right of demanding from the competent authorities the punishment of the guilty persons, or an indemnity for losses sustained."

Résumé of Discussion.

The discussion which led to the alterations in this chapter did not contain any points worthy of special notice.

The following modified text was finally adopted by the Conference :—

Modified Text.

" Art. 47. An armistice suspends warlike operations by a mutual agreement between the belligerents. Should the duration thereof not be fixed, the belligerents may resume operations at any moment ; provided, however, that proper warning be given to the enemy, in accordance with the conditions of the armistice.

" Art. 48. An armistice may be general or local. The former suspends all warlike operations between the belligerents; the latter only those between certain portions of the belligerent armies, and within a fixed radius.

" Art. 49. An armistice should be notified officially and without delay to the competent authorities, and to the troops. Hostilities are suspended immediately after the notification.

" Art. 50. It rests with the contracting parties to define in the clauses of the armistice the relations which shall exist between the populations.

" Art. 51. The violation of the armistice by either of the parties gives to the other the right of terminating it (*le dénoncer*).

" Art. 52. The violation of the clauses of an armistice by private individuals, on their own personal initiative, only affords the right of demanding the punishment of the guilty persons, and, if there is occasion for it, an indemnity for losses sustained."

ORIGINAL PROJECT.

" SECTION IV.—*Of Reprisals.*

" § 69. Reprisals are admissible in extreme cases only, due regard being paid, as far as shall be possible, to the laws of humanity, when it shall have been unquestionably proved that the laws and customs of war have been violated by the enemy, and that they have had recourse to measures condemned by the law of nations

" § 70. The selection of the means and extent of reprisals should be proportionate to the degree of the infraction of the law committed by the enemy. Reprisals that are disproportionately severe are contrary to the rules of international law.

“ § 71. Reprisals shall be allowed only on the authority of the Commander-in-chief, who shall likewise determine the degree of their severity and their duration.”

Résumé of Discussion.

Great difficulty was felt by the members of the Conference in dealing with the subject of this chapter. On the one hand, it was almost impossible to enter upon any discussion on the matter without opening the door to recriminations.

It seemed to be the general feeling that occasions on which reprisals of a severe character had been executed were of far too recent a date to allow the practice to be discussed calmly.

The labours of the Conference also were drawing very near to a conclusion. So far perfect harmony had prevailed among the delegates, notwithstanding the radical differences of opinion entertained by individual members on some of the most important topics brought before them.

It seemed, therefore, undesirable to open at the last moment a discussion which would probably go far to undo the progress already made, and which might lead to results to be deprecated from every point of view.

On the other hand, a Conference assembled expressly to aid in mitigating the miseries of war would naturally be expected to take some notice, at all events, of practices by which those miseries are intensified.

The Conference, nevertheless, felt itself compelled to decline to discuss the subject, and the first Russian delegate, in agreeing to the suppression of the chapter, made the following remarks :—

“ I regret that the uncertainty of silence is to prevail with respect to one of the most bitter necessities of war. If the

practice could be suppressed by this reticence, I could but approve of this course. But if it is still to exist, this reticence may, it is to be feared, remove any limits to its exercise. Nevertheless, I believe that the mere mention in the protocol that the committee, after having endeavoured to regulate, to soften, and to restrain reprisals, has shrunk from the task before the general repugnance felt with regard to the subject, will have a most serious moral bearing. It will, perhaps, be the best limitation we have been able to affix to the practice, and especially to the use which may be made of it in future."

At the second meeting of the committee on the 31st July, Baron Lambermont, the Belgian delegate, informed the committee that he had been directed by his Government to submit, for the consideration of the Conference, some articles concerning the prisoners and wounded taken during time of war into neutral territory. It was as important, he remarked, for the belligerents as for the neutral States that this question should be settled. The Russian delegates, however, stated that the orders they had received from their Government compelled them to confine themselves strictly to their instructions, but that they believed the Emperor of Russia would not refuse permission for the examination of the Belgian project. The sanction of the Emperor was announced to the committee at the twelfth meeting on the 14th August, and the discussion on the Belgian project took place on the 24th August at the nineteenth meeting of the committee, and at the fourth and fifth meetings of the Conference on the 26th and 27th August. The articles originally proposed by the Belgian delegate were as follows :—

ARTICLES ORIGINALLY PROPOSED BY THE BELGIAN DELEGATE
RESPECTING PRISONERS AND WOUNDED TAKEN DURING
TIME OF WAR INTO NEUTRAL TERRITORY.

*"Of Belligerents interned, and of Wounded treated, in
Neutral Territory.*

" Art. 19. Officers may be released if they give a written engagement not to quit the neutral territory without authority to do so.

" The non-commissioned officers and soldiers should be interned, so far as it may be possible, away from the theatre of war.

" They may be kept in camps, and even confined in fortresses or places appropriated to this purpose, if there are any good grounds for fearing that they may escape.

" Art. 20. The neutral State has the right to set free prisoners brought by troops which have entered its territory.

" Art. 21. The neutral State furnishes the persons interned with food and all the assistance required by humanity.

" Art. 22. The neutral State proceeds to an exchange of prisoners interned only in virtue of a common agreement with the belligerent States. The same course is followed with regard to the release from internment (*levée de l'internement*) before the definitive conclusion of peace.

" Art. 23. As soon as the treaty of peace is ratified the persons interned are given up to their own State, which is bound to make good the expenses incurred on their account.

" The neutral State will restore to the State to which it belongs at the same time, and on the same condition, the *matériel*, arms, munitions, equipments, and other objects

brought or carried by the persons interned, or the price realised by their sale, if they have been so disposed of, as an obvious measure of utility or in virtue of a mutual agreement.

"Art. 24. The neutral State may authorise the passage across its territory of the wounded and sick belonging to the combatant armies.

"Art. 25. The neutral State has the right to receive the wounded and sick on condition of keeping them until the conclusion of peace. Those who shall be so lamed as to become disabled for service, or whose convalescence it is presumed will exceed the probable duration of the war, shall be sent back to their own country as soon as their state of health allows of this being done."

Résumé of Discussion.

At the outset of the discussion, Baron Lambermont disclaimed all idea of entering into the question of the rights and duties of neutrality in a general sense. Finding, however, in the Russian project a chapter on prisoners of war, as well as on the wounded, it seemed desirable to the Belgian Government that these subjects should be considered also with regard to neutral territory. If regulations on the subject were drawn up beforehand, the neutral State would not have to improvise them on the spur of the moment, and the belligerents, knowing what they were to expect from the neutral State, would make their arrangements accordingly.

The discussion of the articles was then proceeded with.

Article 20 was eventually withdrawn, as trenching, in the opinion of the committee, on international law. During the discussion the German delegate expressed his opinion that a

convoy of prisoners entering neutral territory by mistake should be allowed to recross the frontier. The Belgian delegate supported this view.

Article 24 gave rise to considerable discussion.

The question was raised whether those of the sick and wounded, who are also prisoners, should obtain their release on entering the neutral territory.

The Belgian delegate declared that the transport of wounded prisoners would only be permitted on the condition that they should be released when they had recovered from their wounds.

General Voigts-Rhetz, the German delegate, could not assent to this provision, which would entail upon the belligerent in whose hands the persons were, the necessity of leaving them in an unhealthy locality, or of sending them back to their own country.

During the discussion Dr Bluntschli, one of the German delegates, maintained that a distinction must be drawn between sick and wounded detained on neutral territory, and those who are merely in transit across it. It is true, he added, that as long as they are on neutral territory they are free; but they cease to be so as soon as they set foot in the enemy's country.

To which Baron Lambermont replied, that the result of this would be that a man who had become prisoner of war on the battle-field would lose this character while crossing the neutral territory, and would reassume it on entering the territory of the enemy.

The Belgian delegate then proceeded to point out what had happened during the last war.

Wounded men, after having been treated for their wounds

in Belgium, were interned there. Why, asked Baron Lambermont, did these men retain the character of prisoners even in a neutral territory ?

Because persons had gone to seek them on the territory of the belligerent where they were prisoners of war, and because it was stipulated as the condition of their removal that they should retain this character in the neutral territory.

The present case, he continued, was different.

It is no longer that of a neutral seeking the wounded in the territory of a belligerent ; it is that of a belligerent asking to be allowed to convey his wounded across a neutral territory. What would happen, he asked, if one of the belligerents were to apply to a neutral to allow a column of unwounded prisoners to be conveyed through his territory ? The neutral would either refuse to allow the transit, or would reply that the prisoners would be released when in his territory. The principle, he concluded, is precisely the same, whether the prisoners are unwounded or wounded.

Baron Jomini thereupon remarked that, if the Belgian view on this question were adopted, humanity would be sacrificed to principle, for the reason that a belligerent, knowing that his prisoners would be set free, might prefer not sending them on, and might leave them, wherever they might happen to be, in a deplorable condition.

Baron Lambermont denied that the responsibility of choosing between the military interest and the interest of humanity rested with the neutral State. It was the duty, he maintained, of the belligerent to determine between them.

An additional article was proposed by the Netherland delegate, to the effect that a neutral State should be under no obligations towards the belligerents with regard to prisoners

who have escaped from the custody of the belligerent, and have taken refuge in the neutral territory.

The article was withdrawn, after a statement by the Swiss delegate that it involved a principle of international law, which was universally recognised, and the force of which would only be weakened if the article was introduced into the project.

The version of the articles finally adopted is as follows :—

Modified Text.

“ Art. 53. The neutral State receiving in its territory troops belonging to the belligerent armies, will intern them, so far as it may be possible, away from the theatre of war.

“ They may be kept in camps, or even confined in fortresses or in places appropriated to this purpose.

“ It will decide whether the officers may be released on giving their parole not to quit the neutral territory without authority.

“ Art. 54. In default of a special agreement, the neutral State which receives the belligerent troops will furnish the interned with provisions, clothing, and such aid as humanity demands.

“ The expenses incurred by the internment will be made good at the conclusion of peace.

“ Art. 55. The neutral State may authorise the transport across its territory of the wounded and sick belonging to the belligerent armies, provided that the trains which convey them do not carry either the *personnel* or *matériel* of war.

“ In this case the neutral State is bound to take the measures necessary for the safety and control of the operation.

“ Art. 56. The Convention of Geneva is applicable to the sick and wounded interned on neutral territory.”

The subjects hitherto dealt with in this Report comprise all those contained in the original Russian project, and I have, in conclusion, only to call your Lordship's attention to the following question brought forward by the French delegate, General Arnaudeau.

At the third meeting of the committee, held on the 1st August, General Arnaudeau, during the discussion on the treatment of "spies," pointed out the desirableness of introducing uniformity into the penal legislation of different countries on this and similar questions.

At the twelfth meeting of the committee, on the 14th August, the Russian delegates announced that they were authorised by their Government to support the proposition of General Arnaudeau, and at the fourth meeting of the Conference the subject came up for discussion.

It was remarked by General Arnaudeau that in the Russian project often occur the words, "shall be delivered to justice." This phrase, he observed, does not convey any fixed idea either as to the nature of the justice, or of the tribunal which administers it. At one place, moreover, a particular act renders the offender liable to the penalty of death, at another to simple imprisonment.

He therefore proposed, as a commencement of the desirable work of constructing a uniform code for dealing with all instances of infringement of international law, that the various States should come to an agreement as to the penalties to be inflicted for the under-mentioned crimes committed in the field :—

"Pillage, whether committed by bands of men or by individuals.

"Thieving from an inhabitant.

" Violence to the wounded.

" Violation of parole given by a prisoner of war.

" Acts of espionage.

" Continuation of hostilities beyond the time fixed for their cessation.

" Armed assaults.

" Hostilities on neutral territory, or that of allies."

In conclusion, the General proposed the adoption of the following resolution :—

" The Powers represented at the Conference shall come to an understanding for the purpose of establishing an agreement on the modes of repression actually prescribed by their military codes.

" They will give a wider bearing to this first improvement by seeking afterwards the bases of an agreement for assimilating the penalties applicable to crimes, offences, and contraventions committed in violation of international law."

This declaration received the support of the greater part of the delegates.

In connection with the same subject, Baron Jomini expressed a desire, that in order to insure the observance of the laws and customs of war proposed by the Conference, the Governments, if they adopt these principles and make a declaration to that effect, should take the necessary steps in order that these rules may become part of the military instructions of their respective armies.

I may add that an article on "guides" was brought forward during the Conference by General de Leer, the second Russian delegate, but was withdrawn without being submitted for discussion.

At the close of the debates of the Conference, the president

proposed that the delegates should attach their signatures to a final protocol, which was in the following terms :—

“ The Conference assembled at Brussels, on the invitation of his Majesty the Emperor of Russia, for the purpose of discussing a project of international rules on the laws and usages of war, has examined the project submitted to it in a spirit in accordance with the elevated sentiment which had led to its being convoked, and which all the Governments represented had welcomed with sympathy.

“ This sentiment had already found expression in the declaration exchanged between the Governments at St Petersburg in 1868 with reference to the exclusion of explosive bullets.

“ It had been unanimously declared, that the progress of civilisation should have the effect of alleviating, as far as possible, the calamities of war; and that the only legitimate object which States should have in view during war, is to weaken the enemy without inflicting upon him unnecessary suffering.

“ These principles met, at that time, with unanimous approval. At the present time the Conference, following the same path, participate in the conviction expressed by the Government of his Majesty the Emperor of Russia, that a further step may be taken by revising the laws and general usages of war, whether with the object of defining them with greater precision, or with the view of laying down, by a common agreement, certain limits which will restrain, as far as possible, the severities of war.

“ War being thus regulated, would involve less suffering, would be less liable to those aggravations which produce uncertainty, unforeseen events, and passions excited by the struggle; it would tend more surely to that which should be

its final object—viz., the re-establishment of good relations, and a more solid and lasting peace between the belligerent States.

“The Conference could respond to these ideas of humanity in no better way than by entering in the same spirit into the examination of the subject they were to discuss.

“The modifications which have been introduced into the project, the comments, the reservations, and separate opinions which the delegates have thought proper to insert in the protocols, in accordance with instructions, and the particular views of their respective Governments or their own private opinions, constitute the *ensemble* of their work. It is of opinion that it may be submitted to the respective Governments which it represents, as a conscientious inquiry of a nature to serve as a basis for an ulterior exchange of ideas, and for the development of the provisions of the Convention of Geneva of 1864, and of the Declaration of St Petersburg of 1868. It will be their task to ascertain what portion of this work may become the object of an agreement, and what portion requires still further examination.

“The Conference, in concluding its work, is of opinion that its debates will have, in every case, thrown light on those important questions, the regulation of which, should it result in a general agreement, would be a real progress of humanity.”

In accordance with the instructions contained in your Lordship's despatch of the 29th ultimo, I have added my signature to this document, which had already been signed by the delegates of all the other Powers represented at the Conference.

(Signed) A. HORSFORD.

BRUSSELS, *September 4, 1874.*

No. III.

MANUAL OF THE LAWS OF WAR ON LAND.

PREPARED BY THE INSTITUTE OF INTERNATIONAL LAW, AND UNANIMOUSLY ADOPTED AT ITS MEETING AT OXFORD ON 9TH SEPTEMBER 1880. TRANSLATED BY W. E. HALL, BARRISTER-AT-LAW, MEMBER OF THE INSTITUTE.¹

PART I.—GENERAL PRINCIPLES.

1. The state of war admits of the performance of acts of violence on the part only of the armed forces of the belligerent States.

¹ Whilst the *Manuel des Lois de la guerre sur terre* was in preparation, the Institute, at the suggestion of M. Rolin-Jaequemyns, undertook "l'étude des codes et règlements que les gouvernements des divers pays ont fait récemment rédiger pour leurs armées, et dans lesquels est prescrite l'observation des lois et coutumes de la guerre." The task was entrusted to M. Mynier, so well known for his labours in connection with the Croix Rouge. His report, from which I extract the following passage, will be found in the *Annuaire* of the Institute of 1879-80, *première partie*, p. 313 :—

"Par une circulaire, en date du 4 avril dernier (1876) je m'adressai donc à mes honorables collègues, et pris la liberté de leur poser, pour leurs pays respectifs, les trois questions suivantes :

"1° Quelles sont actuellement, sur les matières qui ont fait l'objet de la Déclaration de Bruxelles, les prescriptions officielles de votre gouvernement ?

"2° A quelle époque et sous quelle forme (lois, règlements, instructions, etc.) ces prescriptions ont-elles été promulguées ?

"3° Quelles mesures ont été prises pour en assurer l'observation, et notamment quelle est la sanction pénale de leur violation ?

"C'est le résumé des réponses qui me sont parvenues que je dois mettre aujourd'hui sous vos yeux.

"Ce résumé ne sera pas long, car la moisson que j'ai recueillie est fort maigre, bien que, outre mes treize collègues de la commission, j'aie interrogé d'autres membres de l'Institut et plusieurs de mes correspondants particuliers. Peut-être trouvera-t-on que j'aurais dû attendre d'avoir entre mes mains un dossier plus complet avant de présenter ce rapport. J'ai moi-même hésité à le rédiger, en présence du petit nombre de matériaux qui m'ont été fournis ; cependant, j'ai

Persons not forming part of a belligerent armed force must abstain from the performance of such acts.

A distinction being implied in the above rule between the individuals of whom the armed force of a State is composed and other subjects of a State, it becomes necessary to define an "armed force."

2. The armed force of a State comprehends—

1 §. The army properly so called, including militia.

fini par croire qu'il serait bon de vous exposer ce que je savais de l'état des choses, persuadé que des recherches plus prolongées ne modifieraient pas mes conclusions.

"Un point qui me paraît hors de doute, c'est que M. Rolin, en nous invitant à étudier les prescriptions *récentes* touchant l'observation des lois de la guerre, a préjugé un fait dont la réalité n'est rien moins que démontrée, car on ne m'a guère signalé de documents *récents*, de la nature de ceux sur lesquels portait mon enquête. Plusieurs nations ont, à la vérité, un code réglant la conduite de leurs troupes; je ne saurais en particulier passer ici sous silence les 'Instructions pour les armées des États-Unis,' rédigées par Lieber en 1863;—mais, en général, ces lois nationales ne sont pas de fraîche date. Quelques-unes même sont si vieilles et si surannées,—en Danemark et en Suède par exemple,—que l'on ne songerait certainement pas à les invoquer en temps de guerre. Il serait intéressant néanmoins d'en mettre les clauses en regard de la déclaration de Bruxelles; mais ce travail étendu m'a paru sortir du cadre dans lequel je devais me renfermer, et, d'ailleurs, je n'ai pas en les textes sous les yeux. En tout cas, je crois que l'on arriverait ainsi à constater que le droit de la guerre est encore en grande partie un droit coutumier, soit qu'il n'ait jamais été écrit, comme c'est le cas en Angleterre 'où l'on s'est toujours fié au bon sens pratique des officiers et aux traditions de l'armée,' soit qu'il n'ait été formulé que partiellement. Je ne connais que l'ukase russe du 12/24 mai 1877, et le règlement russe du 2/14 juillet de la même année sur les prisonniers de guerre,—dont l'Institut a déjà examiné la teneur dans sa session de Zurich,—qui rentrent dans la catégorie visée par la proposition de M. Rolin.

"Il n'y a rien de surprenant à ce que le gouvernement qui avait pris l'initiative de la conférence de Bruxelles, ait été ensuite le premier à formuler ses idées dans un texte officiel, d'autant plus que la guerre de Turquie lui en a fourni l'occasion. Quant aux autres États, je comprends jusqu'à un certain point qu'ils aient maintenu leurs législations nationales au *statu quo*; en prévision de la métamorphose plus ou moins prochaine de la déclaration de Bruxelles en une convention internationale, il est assez naturel qu'ils attendent d'être fixés sur les règles qui prévaudront d'un commun accord entre tous les peuples civilisés, pour mettre leurs lois particulières en harmonie avec cette nouvelle législation. Néanmoins il est désirable que cette période transitoire ne se prolonge pas, car la plus grande incertitude règne, jusqu'à nouvel ordre, quant au droit existant; celui-ci se trouve, en effet, différer sur bien des points, soit d'un pays à l'autre, soit chez

2 §. National Guards, Landsturm, and all corps which satisfy the following requirements :

- (a) That of being under the direction of a responsible leader.
- (b) That of wearing a uniform or a distinctive mark, which latter must be fixed, and capable of being recognised at a distance.

une même nation, selon qu'on s'en rapporte à la loi écrite, à l'usage, ou à l'opinion professée par les membres de la conférence de Bruxelles.

"Les gouvernements eux-mêmes sont fort embarrassés de savoir quelles directions ils doivent donner à leurs soldats, et c'est, sans doute, en partie pour cela que la plupart d'entre eux s'abstiennent de les instruire à cet égard.

"Ils devraient au moins, semble-t-il, se montrer soucieux de prévenir les violations des conventions de Genève et de Saint-Petersbourg, car sur ce terrain-là le droit est fixé, et il n'y a pas d'hésitation possible. Mais non. Les gouvernements, à peu d'exceptions près, ne se sont pas même acquittés de ce soin, qui constituait cependant pour eux une obligation stricte. Il est certain qu'en apposant leur signature au bas des traités dont je parle, ils se sont implicitement engagés à les faire observer par leurs troupes, et que celles-ci ne peuvent s'y conformer qu'autant qu'on les a initiées aux droits et aux devoirs qui en découlent. Or, ce n'est pas la simple promulgation de ces conventions, à l'époque où elles ont été conclues, qui peut produire ce résultat. Ce qu'on appelle les 'lois de la guerre' est, par essence, une barrière opposée à l'abus de la force, un frein mis au déchaînement des passions bestiales que réveille l'ardeur de la lutte ; il faut donc, après avoir proclamé ce droit, prendre des mesures spéciales pour le faire pénétrer dans l'esprit et dans la conscience de ceux qui en sont les instruments. Il ne suffit pas de l'enseigner aux juristes dans le cours de leurs études ; c'est une mesure de prévoyance élémentaire que de faire l'éducation du soldat sous ce rapport, et le gouvernement qui n'y pourvoit pas, assume une grave responsabilité. Eh bien ! cette nécessité a été presque universellement méconue. Dans les dernières guerres les belligérants ont souvent, il est vrai, fait de louables efforts pour réparer leur insouciance antérieure ; ils ont averti leurs armées, au moment de leur entrée en campagne ou même plus tard, de la manière dont elles devaient se comporter, mais ces injonctions tardives, n'ayant pas été précédées d'une préparation convenable, n'ont pas été aussi efficaces qu'il l'eût fallu. C'est une illusion de croire qu'en allant prêcher ainsi *in extremis* la modération à des hommes déjà excités par l'odeur de la poudre, on obtiendra un résultat satisfaisant. Il est indispensable que le droit de la guerre, conventionnel ou non, soit exposé dans les réglemens, enseigné en temps de paix dans les écoles militaires et sanctionné par de sévères pénalités.

"Cet ensemble de précautions ne se rencontre qu'en Autriche, du moins à ma connaissance. En France, on a publié un '*Manuel de droit international à l'usage des officiers de l'armée de terre ; ouvrage autorisé pour les écoles militaires,*'

(c) That of bearing arms openly.

- 3 §. Crews of vessels of war, and other members of the naval forces of the country.
- 4 §. Inhabitants of a territory not militarily occupied by the enemy, who, on the approach of his army, take up arms spontaneously and openly for the purpose of combating it. Such persons form part of the armed force of the State, even though, owing to

mais j'ignore jusqu'à quel point ce petit livre, fort bien fait, correspond à un enseignement oral. Ailleurs on trouverait à peine de rares articles de loi se rapportant à la convention de Genève ; toutefois, les informations que j'ai reçues ne me permettent pas d'être absolument affirmatif à cet égard.

"Il semble pourtant que l'incurie dont on a fait preuve presque partout jusqu'à ce jour, touche à sa fin. On peut du moins reconnaître, à quelques indices récents, l'aurore d'un réveil des esprits, et pressentir l'avènement d'une ère nouvelle dans laquelle on ne se bornera plus à condamner platoniquement les rigueurs inutiles de la guerre, mais où l'on entreprendra de les empêcher, avec la volonté d'y parvenir. Ces signes avant-coureurs, quelque légers qu'ils soient, méritent d'être mentionnés ici.

"En Angleterre et en Suisse, on élabore, dans les régions officielles, des documents législatifs destinés à mettre le droit de la guerre en harmonie avec les exigences de la conscience moderne. Ces travaux préparatoires s'accomplissent avec une sage lenteur, mais c'est quelque chose que de les savoir sur le chantier. — En Danemark, les chambres ont été nanties deux fois, dans ces dernières années, de projets analogues qui, s'ils n'ont pas abouti, ont du moins prouvé que l'on se préoccupe, dans la sphère gouvernementale, de la responsabilité qui pèse sur l'État. — Enfin, une publication importante vient de voir le jour en Russie. Je veux parler du livre de notre collègue, M. le professeur Martens, sur 'la guerre d'Orient et la Conférence de Bruxelles.' Une traduction française de cet éloquent plaidoyer en faveur d'une entente internationale au sujet du droit de la guerre ne tardera pas à paraître, et hâtera probablement le progrès qui nous occupe."

Up to the present time, 1883, no work of this class has been issued in this country, either by the military or naval authorities. Officers in the army have to learn their duties in this as in other respects from the Army Acts, of which a second edition was published by authority in 1882, and from the Queen's Regulations and Orders for the Army, 1881 ; and officers in the navy from the Queen's Regulations and Admiralty Instructions, 1879. What is technically called "law" is a recognised branch of instruction for officers, in which, as in other branches of knowledge, they have now to pass examinations ; but it is only through the officers themselves that the men are instructed, and this only with reference to the special circumstances in which they are called upon to act.

want of time, they have not organised themselves militarily.

3. Every belligerent armed force is bound to conform to the laws of war.

The sole object during war to which States can legitimately direct their hostilities being the enfeeblement of the military strength of the enemy. —(Declaration of St Petersburg of the 4/16th November 1868.)

4. The laws of war do not allow belligerents an unlimited freedom of adopting whatever means they may choose for injuring their enemy. Especially they must abstain from all useless severity, and from disloyal, unjust, or tyrannical acts.

5. Military conventions made between belligerents during war—such as armistices and capitulations—must be scrupulously observed and respected.

6. No invaded territory is considered to be conquered until war is ended. Until then the occupying State only exercises a *de facto* control of an essentially provisional nature.

PART II.—APPLICATION OF THE GENERAL PRINCIPLES.

I. OF HOSTILITIES.

A. RULES OF CONDUCT WITH RESPECT TO PERSONS.

(a) *Of the inoffensive population.*

Acts of violence being permissible only between armed forces (Art. 1),

7. It is forbidden to maltreat the inoffensive portion of the population.

(b) *Of means of injuring the enemy.*

Loyalty of conduct being enjoined (Art. 4),

8. It is forbidden—

- (a) To employ poison in any form.
- (b) To endeavour to take the life of an enemy in a traitorous manner—*e.g.*, by employing assassins, or by simulating surrender.
- (c) To attack the enemy while concealing the distinctive marks of an armed force.
- (d) To make improper use of the national flag, of signs of military ranks, or of the uniform of the enemy, of a flag of truce, or of the protective marks prescribed by the Convention of Geneva (see Arts. 17 and 40).¹

It being obligatory to abstain from useless severities (Art. 4),

9. It is forbidden—

- (a) To use arms, projectiles, or substances calculated to inflict superfluous suffering, or to aggravate wounds, particularly projectiles which, being explosible, or charged with fulminating or inflammable substances, weigh less than 400 grammes.—(Declaration of St Petersburg.)
- (b) To mutilate or kill an enemy who has surrendered at discretion, or is disabled, and to declare that quarter will not be given, even if the force making such declaration does not claim quarter for itself.

(c) *Of wounded, sick, and the hospital staff.*

The wounded, the sick, and the hospital staff are exempted from unnecessary severities, which might otherwise touch them, by the following rules (Arts. 10 to 18), drawn from the Convention of Geneva.

¹ *Infra*, p. 237 *et seq.*

10. Wounded and sick soldiers must be brought in and cared for, to whatever nation they belong.

11. When circumstances permit, officers commanding in chief, immediately after a combat, may send in enemy soldiers wounded during it to the advanced posts of the enemy, with the consent of the latter.

12. The operation of moving sick and wounded is a neutral act, and the staff engaged in it is neutral.

13. The staff of the hospitals and ambulances—namely, surgeons, clerks, hospital orderlies, and other persons employed in the sanitary, administrative, and transport departments, as well as chaplains, and members and agents of societies duly authorised to assist the official hospital staff—is considered to be neutral while exercising its functions, and so long as there are wounded to remove or succour.

14. The staff specified in the preceding Article must continue after occupation by an enemy has taken place to give its attention to the sick and wounded, to such extent as may be needful, in the ambulance or hospital which it serves.

15. When such staff applies for leave to retire, it falls to the officer commanding the occupying troops to fix the date of departure. After request, however, has been made, the departure of the staff can only be postponed for a short time, and for reasons of military necessity.

16. Measures must, if possible, be taken to secure to the neutralised staff fitting maintenance and allowance when it falls into the hands of the enemy.

17. The neutralised hospital staff must wear a white armlet with a red cross on it. The armlet can be issued only by the military authorities.

18. It is the duty of the generals of the belligerent Powers to appeal to the humanity of the inhabitants of the country in which they are operating, for the purpose of inducing them to succour the wounded, pointing out to them at the same time the advantages which result to themselves therefrom (Arts. 36 and 59). Those who respond to any such appeal are entitled to special protection.

(d) Of the dead.

19. It is forbidden to strip and mutilate the dead lying on the field of battle.

20. The dead must never be buried before such indications of their identity (especially "livrets, numeros," &c.) as they may have upon them have been collected. The indications thus gathered upon enemy dead are communicated to their army or government.

(e) Who can be made prisoners of war.

21. Persons forming part of the armed force of belligerents, on falling into the power of the enemy, must be treated as prisoners of war, conformably to Article 61, and those following it.

This rule applies to messengers openly carrying official despatches, and to civil aeronauts employed to observe the enemy or to keep up communication between different parts of the army or territory.

22. Persons who follow an army without forming part of it, such as correspondents of newspapers, sutlers, contractors, &c., on falling into the power of the enemy, can only be detained for so long a time as may be required by military necessity.

(f) *Of spies.*

23. Persons captured as spies cannot demand to be treated as prisoners of war.

But

24. Persons belonging to a belligerent armed force are not to be considered spies on entering, without the cover of a disguise, within the area of the actual operations of the enemy. Messengers, also, who openly carry official despatches, and aeronauts (Art. 21) are not to be considered spies.

To guard against the abuses to which accusations of acting as a spy give rise in time of war, it must clearly be understood that

25. No person accused of being a spy can be punished without trial.

It is moreover admitted that

26. A spy who succeeds in quitting a territory occupied by the enemy, cannot be held responsible for acts done before so leaving, if he afterwards falls into the enemy's hands.

(g) *Of flags of truce.*

27. A person who is authorised by one of the belligerents to enter into communication with the other belligerent, and presents himself to the latter with a white flag, is inviolable.

28. He may be accompanied by a trumpeter or drummer, by a flag-bearer, and, if necessary, by a guide and an interpreter, all of whom are also inviolable.

The necessity of this privilege is evident, especially as its exercise is frequently required in the simple interests of humanity. I must not, however, be so used as to be prejudicial to the opposite party.

Hence

29. The commander to whom a flag of truce is sent is not obliged to receive its bearer under all circumstances.

Besides

30. The commander who receives a flag of truce has the right to take all necessary measures to prevent the presence of an enemy within his lines from being prejudicial to him.

The bearer of a flag of truce, and those who accompany him, are bound to act with good faith towards the enemy who receives them (Art. 4).

31. If the bearer of a flag of truce abuse the confidence which is accorded to him, he may be temporarily detained; and if it be proved that he has made use of his privileges to suborn to traitorous practices, he loses his right of inviolability.

B. RULES OF CONDUCT WITH REGARD TO THINGS.

(a) *Of the means of exercising violence. Of bombardment.*

Mitigations of the extreme rights of violence are necessarily consequent upon the rule that useless severity shall not be indulged in (Art. 4). It is thus that

32. It is forbidden—

- (a) To pillage, even in the case of towns taken by assault.
- (b) To destroy public or private property, unless its destruction be required by an imperative necessity of war.
- (c) To attack and bombard undefended places.

The right of belligerents to have recourse to bombardment against fortresses and other places in which the enemy is intrenched is not contestable, but humanity requires that this form of violence shall be so restrained as to limit as much as possible its effects to the armed forces of the enemy and to their defences.

Hence

33. The commander of an attacking force must do everything in his power to intimate to the local authorities his intention of bombarding, before the bombardment commences, except when bombardment is coupled with assault.

34. In cases of bombardment, all necessary measures ought to be taken to spare, so far as possible, buildings devoted to religion, the arts, sciences, and charity, hospitals, and places in which sick and wounded are kept; provided always that such buildings are not at the same time utilised, directly or indirectly, for defence.

It is the duty of the besieged to indicate these buildings by visible signs, notified to the besieger beforehand.

(b) *Of the sanitary matériel.*

The rules (Arts. 10 and those following) for the protection of the wounded would be insufficient if special protection were not also given to hospitals. Consequently, in accordance with the Convention of Geneva,

35. The ambulances and hospitals used by armies are recognised as being neutral, and must be protected and respected as such by the belligerents, so long as there are sick and wounded in them.

36. A like rule applies to private buildings, or parts of private buildings, in which sick and wounded are collected and cared for.

Nevertheless

37. The neutrality of ambulances and hospitals ceases to exist if they are guarded by a military force, a police post being alone permissible.

38. The *matériel* of military hospitals remains subject to the laws of war; persons attached to the hospitals can only, therefore, carry away their private property on leaving. Ambulances, on the other hand, preserve their *matériel*.

39. Under the circumstances contemplated in the foregoing paragraph the term ambulance is applicable to field hospitals and other temporary establishments which follow the troops to the field of battle for the purpose of receiving sick and wounded.

40. A distinctive flag and uniform, bearing a red cross upon a white ground, is adopted for hospitals, ambulances, and things and persons connected with the movement of sick and wounded. It must always be accompanied by the national flag.

II. OF OCCUPIED TERRITORY.

A. DEFINITION.

41. A territory is considered to be occupied when, as the result of its invasion by an enemy's force, the State to which it belongs has ceased in fact to exercise its ordinary authority within it, and the invading State is alone in a position to maintain order. The extent and duration of the occupation are determined by the limits of space and time within which this state of things exists.

B. RULES OF CONDUCT WITH REGARD TO PERSONS.

Since new relations arise from the provisional change of government,

42. It is the duty of the occupying military authority to inform the inhabitants of the occupied territory as soon as possible of the powers which it exercises, as well as of the local extent of the occupation.

43. The occupier must take all measures in his power to re-establish and to preserve public order.

With this object

44. The occupier must, so far as possible, retain the laws which were in vigour in the country in time of peace, modifying, suspending, or replacing them only in case of necessity.

45. The civil functionaries of every kind who consent to continue the exercise of their functions are under the protection of the occupier. They may be dismissed, and they may

resign at any moment. For failing to fulfil the obligations freely accepted by them, they can only be subjected to disciplinary punishment. For betraying their trust, they may be punished in such manner as the case may demand.

46. In emergencies the occupier may require the inhabitants of an occupied district to give their assistance in carrying on the local administration.

As occupation does not entail a change of nationality on the part of the inhabitants,

47. The population of an occupied country cannot be compelled to take an oath of fidelity or obedience to the enemy's power. Persons doing acts of hostility directed against the occupier are, however, punishable (Art. 1).

48. Inhabitants of an occupied territory who do not conform to the orders of the occupier can be compelled to do so.

The occupier cannot, however, compel the inhabitants to assist him in his works of attack or defence, nor to take part in military operations against their own country (Art. 4).

Moreover,

49. Human life, female honour, religious beliefs, and forms of worship, must be respected. Interference with family life is to be avoided (Art. 4).

C. RULES OF CONDUCT WITH RESPECT TO THINGS.

(a) *Public property.*

Although an occupier, for the purpose of governing the occupied territory, takes the place, in a certain sense, of the legitimate government, he does not possess unrestricted powers. So long as the ultimate fate of the territory is undecided—that is to say, until the conclusion of peace—the occupier is not at liberty to dispose freely of such property of his enemy as is not immediately serviceable for the operations of war.

Hence

50. The occupier can appropriate only money and debts

(including negotiable instruments) belonging to the State, arms, stores, and in general such movable property of the State as can be used for the purposes of military operations.

51. Means of transport (State railways and their rolling stock, State vessels, &c.), as well as land telegraphs and landing cables, can only be sequestered for the use of the occupier. Their destruction is forbidden, unless it be required by the necessities of war. They are restored at the peace in the state in which they then are.

52. The occupier can only enjoy the use of, and do administrative acts with respect to, immovable property, such as buildings, forests, and agricultural lands belonging to the enemy State (Art. 6).

Such property cannot be alienated, and must be maintained in good condition.

53. The property of municipal and like bodies, that of religious, charitable, and educational foundations, and that appropriated to the arts and sciences, are exempt from seizure.

All destruction or intentional damage of buildings devoted to the above purposes, of historical monuments, of archives, and of works of art or science, is forbidden, unless it be imperatively demanded by the necessities of war.

(b) *Private property.*

If the powers of an occupier are limited with respect to the property of the enemy State, *a fortiori* they are limited with respect to the property of private persons.

54. Private property, whether held by individuals or by corporations, companies, or other bodies, must be respected, and cannot be confiscated, except to the extent specified in the following Articles.

55. Means of transport (railways and their rolling stock, vessels, &c.), telegraphs, stores of arms and munitions of war, may be seized by the occupier, notwithstanding that they belong to individuals or companies ; but they must be restored if possible at the conclusion of peace, and compensation for the loss inflicted on their owners must be provided.

56. Supplies in kind (requisitions) demanded from districts or individuals must correspond to the generally recognised necessities of war, and must be proportioned to the resources of the country.

Requisitions can only be made by express authorisation of the officer commanding in the occupied locality.

57. The occupier can only levy such taxes and duties as are already established in the occupied State. He uses them to satisfy the expenses of administration to the extent that they have been so used by the legitimate government.

58. The occupier can only levy contributions in money as the equivalent of unpaid fines, or unpaid taxes, or of supplies in kind, which have not been duly made.

Contributions in money can only be imposed by the order, and on the responsibility, of the general in chief or of the supreme civil authority established in the occupied territory ; and their incidence must as far as possible correspond to that of the taxes already in existence.

59. In apportioning the burdens arising from the billeting of troops and contributions of war, zeal shown by individuals in caring for the wounded is to be taken into consideration.

60. Receipts are to be given for the amount of contributions of war, and for articles requisitioned when payment for them is not made. Measures must be taken to secure that these receipts shall be given always, and in proper form.

III. OF PRISONERS OF WAR.

A. THE STATE OF CAPTIVITY.

Captivity is neither a punishment inflicted on prisoners of war (Art. 21) nor an act of vengeance ; it is merely a temporary detention which is devoid of all penal character. In the following Articles, regard is had both to the consideration due to prisoners of war and to the necessity of keeping them in safe custody.

61. Prisoners of war are at the disposal of the enemy government, not of the individuals or corps which have captured them.

62. They are subjected to the laws and rules in force in the enemy army.

63. They must be treated with humanity.

64. All that belongs to them personally, except arms, remains their property.

65. Prisoners are bound to state, if asked, their true name and rank. If they do not do so, they can be deprived of all or any of the mitigations of imprisonment enjoyed by other prisoners circumstanced like themselves.

66. Prisoners can be subjected to internment in a town, fortress, camp, or any other place, definite bounds being assigned which they are not allowed to pass ; but they can only be confined in a building when such confinement is indispensable for their safe detention.

67. Insubordination justifies whatever measures of severity may be necessary for its repression.

68. Arms may be used against a fugitive prisoner after summons to surrender.

If he is retaken before he has rejoined his army, or has escaped from the territory under the control of his captor, he may be punished, but solely in a disciplinary manner, or he

may be subjected to more severe surveillance than that to which prisoners are commonly subjected. But if he be captured afresh, after having accomplished his escape, he is not punishable unless he has given his parole not to escape, in which case he may be deprived of his rights as prisoner of war.

69. The government detaining prisoners is charged with their maintenance.

In default of agreement between the belligerents on this point, prisoners are given such clothing and rations as the troops of the capturing State receive in time of peace.

70. Prisoners cannot be compelled to take part in any manner in the operations of the war, nor to give information as to their country or army.

71. They may be employed upon public works which have no direct relation to the operations carried on in the theatre of war, provided that labour be not exhausting in kind or degree, and provided that the employment given to them is neither degrading with reference to their military rank, if they belong to the army, nor to their official or social position, if they do not so belong.

72. When permission is given to them to work for private employers, their wages may be received by the detaining government, which must either use it in procuring comforts for them, or must pay it over to them on their liberation, the cost of their maintenance being if necessary first deducted.

B. TERMINATION OF CAPTIVITY.

The reasons which justify the detention of a captured enemy last only during the continuance of war.

Consequently

73. The captivity of prisoners of war ceases as of course on the conclusion of peace; but the time and mode of their

actual liberation is a matter for agreement between the governments concerned.

In virtue of the Convention of Geneva,

74. Captivity ceases as of course, before the date fixed upon for general liberation, in the case of wounded or sick prisoners who, after being cured, are found to be incapable of further service.

The captor must send these back to their country so soon as their incapacity is established.

During the war

75. Prisoners can be released by means of a cartel of exchange negotiated between the belligerent parties.

Even without exchange,

76. Prisoners can be set at liberty on parole, if the laws of their country do not forbid it. The conditions of their parole must be clearly stated. If so set at liberty, they are bound, on their honour, to fulfil scrupulously the engagements which they have freely entered into. Their government, on its part, must neither require nor accept from them any service inconsistent with their pledged word.

77. A prisoner cannot be compelled to accept his liberty on parole. In the same way the enemy government is not obliged to accede to a request made by a prisoner to be released on parole.

78. Prisoners liberated on parole and retaken in arms against the government to which they are pledged, can be deprived of the rights of prisoners of war, unless they have been included among prisoners exchanged unconditionally under a cartel of exchange negotiated subsequently to their liberation.

IV. PERSONS INTERNED IN NEUTRAL TERRITORY.

It is universally admitted that a neutral State cannot lend assistance to belligerents, and especially cannot allow them to make use of its territory without compromising its neutrality. Humanity, on the other hand, demands that a neutral State shall not be obliged to repel persons who beg refuge from death or captivity. The following rules are intended to reconcile these conflicting requirements :—

79. The neutral State within the territory of which bodies of troops or individuals belonging to the armed force of the belligerents take refuge, must intern them at a place as distant as possible from the theatre of war.

It must do the same with persons using its territory as a means of carrying on military operations.

80. Interned persons may be kept in camps, or may be shut up in fortresses or other places of safety.

The neutral State decides whether officers may be left free on parole on an engagement being entered into by them not to leave the neutral territory without authorisation.

81. In default of special convention regulating the maintenance of interned persons, the neutral State supplies them with rations and clothes, and bestows care upon them in other ways to such extent as is required by humanity.

It also takes care of the *matériel* of war which the interned persons may have had with them on entering the neutral territory.

On the conclusion of peace, or sooner if possible, the expenses occasioned by the internment are repaid to the neutral State by the belligerent State to which the interned persons belong.

82. The provisions of the Convention of Geneva of the 22d August 1864 (see above, Articles 10 to 18, 35 to 40,

and 74), are applicable to the hospital staff, as well as to the sick and wounded who have taken refuge in, or been carried into, neutral territory.

Epecially

83. Sick and wounded who are not prisoners may be moved across neutral territory, provided that the persons accompanying them belong solely to the hospital staff, and that any *matériel* carried with them is such **only as** is required for the use of sick and wounded. The neutral State, across the territory of which sick and wounded are moved, is bound to take whatever measures of control are required to secure the strict observance of the above conditions.

PART III.—PENAL SANCTION.

When infractions of the foregoing rules take place, the guilty persons should be punished, after trial, by the belligerent within whose power they are.

84. Persons violating the laws of war are punishable in such way as the penal law of the country may prescribe.

But this mode of repressing acts contrary to the laws of war being only applicable when the guilty person can be reached, the injured party has no resource other than the use of reprisals when the guilty person cannot be reached, if the acts committed are sufficiently serious to render it urgently necessary to impress respect for the law upon the enemy. Reprisals, the occasional necessity of which is to be deplored, are an exceptional practice, at variance with the general principles that the innocent must not suffer for the guilty, and that every belligerent ought to conform to the laws of war even without reciprocity on the part of the enemy. The right to use reprisals is tempered by the following restrictions:—

85. Reprisals are forbidden whenever the wrong which has afforded ground of complaint has been repaired.

86. In the grave cases in which reprisals become an imperative necessity, their nature and scope must never exceed

the measure of the infraction of the laws of war committed by the enemy.

They can only be made with the authorisation of the commander-in-chief.

They must, in all cases, be consistent with the rules of humanity and morality.

MONTAGUE BERNARD.

W. E. HALL.

T. E. HOLLAND.

J. WESTLAKE.

No. IV.

LES LOIS DE LA GUERRE.—APPEL AUX BELLIGÉRANTS ET À LA PRESSE.¹

GAND, 28 Mai 1877.

Une guerre, longtemps redoutée, vient d'éclater entre deux grands États européens. De part et d'autre, des flottes

¹ Au moment de publier cet *appel*, projeté dès le 20 mai dernier dans une conférence préparatoire tenue à Heidelberg, chez M. le Dr Bluntschli, président de l'Institut, j'apprends qu'un *oukase* impérial du 12/24 mai, allant en partie au-devant de nos vœux, prescrit aux autorités et aux fonctionnaires russes, l'observation de dispositions conformes aux règles du droit international, à l'égard tant de la puissance ennemie et de ses sujets, que des États neutres et de leurs sujets. Je n'en crois pas moins devoir donner suite à la publication, décrétée par le Bureau de l'Institut, d'abord parce qu'elle s'adresse à tous les belligérants, en leur rappelant ce qui est, non-seulement de convenance, mais de droit positif actuel; ensuite parce qu'elle me paraît présenter sous une forme concise la substance de la déclaration de Bruxelles, c'est-à-dire un *minimum* de règles, auxquelles les armées en campagne et les populations des pays envahis sont de plein droit tenues de se conformer.

Le Secr.-Gén. : G. R.-J.

puissantes et des armées nombreuses ont commencé ou se préparent à mettre en œuvre tous les moyens destructeurs que leur fournit la science moderne. Les passions nationales et religieuses sont surexcitées.

Devant cette terrible réalité, le devoir de tous ceux qui croient pouvoir exercer une influence quelconque, si modeste qu'elle soit, en faveur du droit et de l'humanité, est tracé. Ils ont moins aujourd'hui à rechercher les causes de la lutte, qu'à élever la voix pour tâcher d'en circonscrire les effets dans les limites de la stricte nécessité. Ils ont à rappeler aux combattants engagés des deux côtés que, même dans les guerres les plus justes, il est des moyens que le droit et l'humanité reprouvent absolument. La méconnaissance du droit de la guerre, écrit dans les traités ou implicitement reconnu dans les usages modernes, aurait en effet pour résultat, non-seulement des maux individuels incalculables, mais un retour général et plus ou moins complet de l'Europe civilisée vers la barbarie.

Dans ces circonstances, l'Institut de droit international, qui, aux termes de ses statuts, aspire à "favoriser le progrès du droit international, en s'efforçant de devenir l'organe de la conscience juridique du monde civilisé," ne saurait demeurer indifférent. Il doit se souvenir qu'il s'est promis spécialement de "travailler, dans les limites de sa compétence, à l'observation des lois de la guerre." Il est vrai que les limites de sa compétence se réduisent à celles d'une "association exclusivement scientifique et sans caractère officiel" (art. 1 des statuts). Mais ce serait méconnaître un fait historique constant que de dénier toute influence à la parole même de simples particuliers, lorsque cette parole est l'écho d'un sentiment général. Or, aujourd'hui il y a un sentiment général :

c'est qu'il existe un droit de la guerre, encore imparfait sans doute, mais obligeant dès à présent les belligérants à l'observation de certaines règles nettement déterminées.

Nous croyons donc faire œuvre utile en résumant ici les règles de ce droit qui ont été expressément consacrées par des traités récents, ou qui ont obtenu l'approbation et une sorte de sanction commune dans le travail collectif des représentants de tous les États européens, réunis à Bruxelles en 1874.

Le Congrès de Paris de 1856 a :

1° Interdit la course ;

2° Protégé les ports de mer et le commerce neutre contre les effets d'un blocus purement fictif ;

3° Déclaré exempts de saisie les vaisseaux neutres avec toute leur cargaison, et les marchandises neutres navigant sous pavillon ennemi, à la seule exception de la contrebande de guerre.

La *Convention de Genève de 1864* protège les militaires blessés ou malades, à quelque nation qu'ils appartiennent, neutralise en principe les ambulances et les hôpitaux militaires, avec leur personnel, et soustrait dans une certaine mesure aux charges de la guerre les habitants du pays envahi qui auront recueilli et soigné des blessés.

Des *Articles additionnels* à cette convention, signés en 1868, n'ont pas été ratifiés par les parties contractantes. Mais ceux d'entre ces articles qui étendent à la marine la convention de 1864 ont été adoptés comme *modus vivendi* par les belligérants durant la guerre de 1870-1871. Une mesure analogue ne pourrait-elle pas être prise pour la guerre actuelle ?

La *Déclaration de S^t Pétersbourg de 1868* interdit l'emploi, sur terre ou sur mer, de tout projectile d'un poids inférieur à 400 grammes, qui serait ou explosible ou chargé de matières fulminantes ou inflammables.

Enfin et surtout le *projet de Déclaration internationale, arrêté par la Conférence de Bruxelles en 1874*, énonce les règles essentielles du droit de la guerre, telles qu'elles sont reconnues de nos jours dans tous les États civilisés. Cet acte, dû à l'initiative de S.M. l'Empereur Alexandre II, constate l'accord existant sur ce point entre les hommes compétents qui représentaient tant la Russie et la Turquie, que tous les autres États de l'Europe. Il est vrai que jusqu'ici il n'a pas reçu de sanction officielle. Mais il n'en doit pas moins être considéré, eu égard à sa nature et à son origine, comme l'expression raisonnable des obligations que la conscience juridique des peuples européens impose aujourd'hui aux armées belligérantes comme aux populations des pays envahis. A ce titre, il serait éminemment propre à servir de base à des instructions qui seraient données par les belligérants à leurs armées respectives. Dans tous les cas, un État ou une armée, qui méconnaîtrait ces règles, encourrait la réprobation de l'opinion publique, et renoncerait à son honneur de puissance ou d'armée civilisée.

Cet acte consacre en substance les règles suivantes, dont la force obligatoire paraît aujourd'hui incontestable :

A) Les habitants paisibles d'un pays occupé par l'ennemi doivent être respectés et protégés autant que possible,—c'est à-dire, autant que le permettent la sécurité de l'armée envahissante et les nécessités militaires,—dans leurs biens, dans leurs institutions et leurs usages, dans leurs droits et leurs libertés.

B) L'honneur et les droits de la famille, la vie et la propriété des individus, ainsi que leurs convictions religieuses et l'exercice de leur culte doivent toujours être respectés.

C) La destruction ou la saisie inutile d'œuvres d'art et de

science, d'établissements consacrés aux cultes, à la charité et à l'instruction, aux arts et aux sciences, est interdite.

D) Les habitants peuvent défendre leur pays, à condition de porter les armes ouvertement, d'obéir à un chef responsable et de se conformer aux lois et coutumes de la guerre. Mais les combattants irréguliers qui, méconnaissant les lois de la guerre, se livrent à des actes de brigandage et de violence sont justement punis.

E) L'emploi de poison ou d'armes empoisonnées, le meurtre par trahison, ou le meurtre d'un ennemi sans défense ne sont ~~pas des moyens de guerre~~ licites.

F) Ne peuvent être bombardées que les localités défendues par l'ennemi. Dans ce cas même on usera de tous les ménagements compatibles avec les nécessités de l'attaque, et, en aucun cas, une ville prise d'assaut ne sera livrée au pillage.

G) Ne peuvent être considérés comme espions et punis comme tels, que les individus qui ont agi *clandestinement* ou *sous de faux prétextes*, et non les militaires non déguisés ou les messagers qui accomplissent ouvertement leur mission.

H) Les prisonniers de guerre doivent être traités avec humanité. Le but de leur captivité ne doit pas être de les punir, mais de les garder.

I) Les habitants du pays envahi ne peuvent être contraints à porter les armes contre leur patrie.

K) Tout pillage est interdit.

L) Les contributions de guerre et les réquisitions ne peuvent être imposées que sous des conditions et dans des limites déterminées.

M) Les parlementaires sont inviolables. Mais il est licite de prendre des mesures pour les empêcher de se procurer, grâce à leur situation privilégiée, des informations sur l'armée ennemie.

N) Les capitulations et les armistices doivent être rigoureusement observés. Les capitulations ne doivent pas être contraires à l'honneur militaire.

Nous savons combien il est difficile d'avoir toujours devant les yeux, au milieu des périls de la guerre, les prescriptions rigoureuses de l'humanité. Le soldat excité par l'ardeur du combat, par l'enivrement de la victoire, par une résistance aux abois, ou par le sentiment de sa propre conservation, n'est que trop naturellement porté à violer, sans réflexion comme sans scrupule, les règles de modération qu'il approuvait pleinement quand il était de sang-froid. Mais le but suprême du droit, qui est d'assurer et de maintenir entre les hommes des relations humaines, n'en doit pas moins dominer la guerre elle-même. Cette vérité ne saurait être rappelée avec trop d'insistance à ceux qui gouvernent les peuples ou commandent les armées.

C'est dans cette pensée que nous invitons les journaux des États belligérants comme ceux des pays neutres à accorder leur publicité au présent appel. Ils nous aideront ainsi à dissiper les derniers restes de ce préjugé barbare et funeste que "dans la guerre tout est permis !" Ils contribueront à répandre la connaissance et la pratique des véritables principes du droit des gens.

Pour l'Institut de droit international :

Le président, D^r BLUNTSCHLI (Heidelberg).

Le 1^{er} vice-président, E. DE PARIEU (Paris).

Le 2^{me} vice-président, T. M. C. ASSER (Amsterdam).

Le secrétaire-général, G. ROLIN-JAEQUEMYS (Gand).

No. V.

II.—ANCIENT INDIAN IDEAS ABOUT WAR.

9. CONQUERORS SHOULD KINDLY TREAT THE VANQUISHED.

Mahābhārata, xii. 3487 ff.

He who a foe has seized in fight—
 A foe whose deeds were fair and right—
 That foe with due respect should greet,
 And ne'er through hatred harshly treat.
 Who acts not thus is hard in heart,
 And fails to play a Kshatriya's part.
 He who in war has gained success
 Should seek to soothe his foe's distress ;
 Should on him kindly, blandly smile,
 And thus his downfall's pain beguile.
 When thou hast caused another woe,
 Thou shouldst him more thy kindness show.
 Though hated now, if thou begin
 By friendly acts his heart to win,
 Ye shall not long remain estranged :
 The foes shall soon to friends be changed.

xii. 3487 ff. "He transgresses the duty of a Kshatriya who, having captured a hostile king who has acted fairly, through hatred fails to treat him with respect. A powerful king should be bland, should show compassion (to those) in calamity. Such a prince is dear to all creatures, and does not fall from the condition of prosperity. A man should act all the more kindly to him who has suffered at his hands. He who, being dialiked, shall do what is kind, will soon become dear."—Further Metrical Translations, with Prose Versions, from the *Mahābhārata*. By John Muir, D.C.L. P. 16.

10. KSHATRIYAS (RAJPUTS) SHOULD FIGHT FAIRLY, AND SPARE
THE VANQUISHED, &c.

Mahābhārata, xii. 3541 ff., 3557 ff., 3659 b., 3675 ff.

A Kshatriya fairly ought to fight,
And ne'er disabled foemen smite ;
His foes on equal terms should meet ;
Men worse equipped should scorn to beat,
Whoe'er unfairly victory wins
Destroys himself—he basely sins.
'Tis better far to lose thy life,
When waging honourable strife,
Than live, and overcome thy foe,
By artifices mean and low.
A beaten foe who takes to flight,
Unfit again to turn and fight,
Disheartened, hopeless, faint, oppressed,
Should never be too hardly pressed.
A warrior brave should hate to slay
The man who throws his arms away,
And humbly cries, " Great victor, save
From death thy vanquished, prostrate slave."
Thyself a wounded foeman tend,
Or to his home for succour send.
Ne'er press a captive maid to wed,
Before a year its course has sped.

xii. 3541. " A Kshatriya who is not clad in armour is not to be encountered in battle. A single warrior is to be fought by a single warrior, so that a man who is unable (to fight) may be let go. [According to the reading in the Bombay edition, this must be translated : 'One warrior must be addressed by another, "Do thou discharge thy weapon, and I shoot."']
3542. If (the foe) comes accoutred, his adversary must also equip himself :

if he come with an army, he must be challenged with an army. 3543. If he fight with trickery, he must be encountered in the same way. If he fight fairly, he should be repelled by fair means. 3544. A man on horseback is not to attack one in a chariot; but one in a chariot should assail one in a chariot. An enemy disabled (*vyasane*), or terrified, or vanquished, should not be smitten. 3545. A poisoned or barbed arrow is not to be used: these are the weapons of the wicked. The warrior must fight righteously, and not be incensed against the enemy who seeks to kill him. 3546. An enemy who is breathless, or childless, is never to be slain, nor one whose weapon is broken, or who is worn out, or whose bowstring is cut, or whose chariot is broken. 3547. A wounded enemy is to be cured in (the conqueror's) own country, or to be conveyed to his home,—when a quarrel arises among good men, and a virtuous man is unfortunate. 3548. And if not wounded, he is to be released,—this is the eternal law. Wherefore Manu Svāyambhuva enjoined that a man should fight fairly. 3549 and 3550. Let him adhere to, and not violate, the rule of the virtuous. The wicked Kshatriya who, engaging to fight fairly (? *dharma-sangarah*), lives and acts treacherously, and conquers by injustice, destroys himself: this is the conduct of bad men; but the wicked should be overcome by goodness. 3551. It is better to die by acting righteously than to conquer by sinful procedure." . . . [3580. "Let a king who desires his own welfare seek victory by an abundance of every sort of skill, not by deceit or fraud."] 3557. "A king should not seek to conquer the earth by injustice. . . . 3558. Such a conquest is not abiding, does not conduct to heaven, and ruins both the king and the country. 3559. He should not, after capturing, slay a foe whose armour is fractured, one who calls out, 'I am thy (prisoner),' one who joins his hands, or who lays down his arms. 3560. An enemy who has been vanquished by force of arms should not be (*again*) attacked: a year should be allowed to elapse, so that he may be born (grow, or acquire strength ?) again.¹ 3561. A maiden who has been violently captured should not be asked (in marriage) within a year."² 3564. "If two armies are in conflict, and a Brahman comes between them, and seeks to quell strife on both sides, then the battle must not be continued."

¹ The commentator interprets this last clause differently, giving to *vipranayet* (which the St Petersburg lexicon explains as "allowing to elapse") the sense of "teaching." The clause he understands to mean: "He should be taught to say, 'I am (thy) slave;' then after a year, though he does not say (this), let him become the son of his conqueror, and then released."

² According to the commentator this means, "The damsel is to be asked, 'Dost thou choose us (me), or another?' If she wishes another, she is not to be detained (*na sthāpyā*). This sense of these words was suggested to me by Prof. Eggeling. I find it, however, also in my translation of this passage in the Indian Antiquary for September 1874, p. 240).

xii. 3659. "Old men, children, and women are not to be slain; nor is any one to be smitten from behind, nor is any one to be slain whose mouth is filled with grass,¹ or who cries 'I am thine.'"

xii. 3675. "Let not routed enemies be too far pursued. . . . 3677. For heroes do not love to smite the flying very severely."

Ibid. x. 187. (xii. 3708). "Men do not rightfully approve the slaughter of those who are asleep, or have cast away their weapons, or who have lost their chariots and horses, or those that cry 'I am thine,' or who take refuge with you, or whose hair is loose, or whose chariots are lost" (*vimukta*).²

v. 1038. "Do not abandon, even in time of danger, a man attached to thee, one who flees to thee, and one who cries 'I am thine,' when they take refuge with thee."

See also Mbh., v. 1038; xii. 3782, and 5212; and Bhāgavata Purāṇa, i. 7. 36.

A passage to a similar effect with the above, enjoining fair fighting and mercy, is found in Manu, vii. 90-93. On the other hand, we find such passages as the following:—

i. 5564. "An enemy is not to be let go, though he speaks much that is piteous: no mercy is to be showed to him; let the wrong-doer be smitten." This is repeated in substance in xii. 5298 b f.

v. 1426. "An enemy who has fallen into your power, and is exposed to death, is not to be let go. Let him, lowly bending, serve; or let him who deserves to be slain, be smitten. For unless he be slain, he soon becomes an object of apprehension.

x. 53. "The host of an enemy is to be smitten when it is fatigued or torn asunder, or at a meal, . . . or when it is asleep, at midnight, or when it has lost its leader," &c.

The preceding passages, as will have been seen, abound in chivalrous sentiments in regard to the treatment of vanquished and captive enemies, though some written in a different spirit have been cited. This difference may be due both to the fact that these opposite sentiments are ascribed to different characters, and also to their proceeding from authors of different

¹ This is not explained by the commentator. But Professor Cowell refers me to the explanation which is given in a note in his own edition of Mr Colebrooke's *Essays*, vol. ii. p. 210 (p. 235 of the old edition), on some words in an inscription: "blades of grass are perceived between thy adversary's teeth:"—"This alludes to the Indian custom of biting a blade of grass as a token of submission and of asking quarter."

² In xii. 3786 ff (compare 5300 ff) a warrior is to speak kindly to his enemies when about to smite them, and to lament and weep when he has smitten them, and to pretend that it is against his will that they are assailed; but in secret he is to pay honour to the smiters (*iti vacha vadan hantrin prajayeta rahogata*, verse 3789).

ages and different feelings, who contributed the portions of the great epic poem in which they occur,—a work which must have been repeatedly interpolated with new additions from the pens of successive writers.

11. NEEDLESS WARFARE CONDEMNED.

Mahābhārata, xii. 2618, 2532, 3581, 3768.

A Kshatriya's function is the worst
Of all men's tasks—the most accurst.
For whether warriors fight or fly,
The fate of many is to die ;
And so a battle-loving king
On men must direful misery bring.
Hate, prince, thy hands with blood to stain ;
Seek other means thine ends to gain.
Ne'er risk the chance of battle fell—
Of which the issue none can tell—
Nor e'er, till gentler measures¹ fail,
Thyself of arms and force avail.
By offers fair, with accents smooth,
Thine angry enemy seek to soothe ;
And so adjust the cause of strife,
Which else would waste full many a life.

v. 4349. " War does not conduce to a man's welfare, nor to virtue, nor to prosperity, much less to happiness. Victory does not always attend upon him. Do not set thy heart on war."

xii. 3581. "There is no function worse than that of a Kshatriya. Through flight or fighting a king causes death to his people."

xii. 3769. "Fighting is the worst means of gaining victory ; victory in

¹ The measures or devices recommended with the view of avoiding war, not all of them honourable, are '*Sāntva* or '*Sāman* (conciliation), *dāna* or *pradāna* (giving gifts), and *bheda* (seeking to create division among the enemy's adherents)—*Mahābhārata*, i. 5586, xii. 2619, and *Manu*, vii. 198. A show of force is also recommended, or a combination of pacific and terrifying measures ; xi. 3775-3790.

battle is accidental, or by the will of a god. 3770. A great army, when defeated, is most difficult to restrain (from flight); it is like the great rush of waters, or like the flight of deer."

xii. 3522. "A king should extend his conquests without fighting: victory gained by fighting is declared to be the worst."

xii. 2618. "A wise man who desires royal power should always avoid warfare. Brihaspati declares that the end desired should be attained by three methods. A wise man should be content with the success which he can gain by conciliation, by gifts, and by causing dissensions."

xii. 3775. "At the display of (an enemy's) host, fear afflicts the timid: 'where will its blow fall upon us, like that of a blazing thunderbolt?'"

Of a quite different tendency are the following lines:—

12. PRAISE OF A WARRIOR'S LIFE.

Mahābhārata, xii. 2283, 3503, 3603, 3657,

A king who lists to duty's call,
In fight should ever seek to fall;
Should on a sick-bed scorn to lie,
And, moaning, slowly pine and die.
A death like this may fit a slave,
But suits not warriors proud and brave.
By hopes of wide renown inspired,
By wrath and warlike ardour fired,
A hero scorns his fiercest foes,
Nor ever feels their piercing blows.
The men their lives who bravely yield
To death upon the battle-field,
Their fleeting pangs and sufferings o'er,
All straight to heavenly mansions soar.
There nymphs divine these heroes meet,
With witching smiles and accents sweet,
Run up and cry in emulous strife,
"Make me," "nay, me," "nay, me," "thy wife."

The following passages pronounce encomiums on those who die in battle :—

2283. "The ancients do not praise the act of that Kshatriya who returns from battle with his body free from wounds."

xii. 3600. "Be not the father of those base men who abandon their comrades in battle, and go home in safety. 3601. The gods, headed by Indra, work him evil who, by forsaking his comrades, seeks to save his life. 3602. Every such Kshatriya should be slain with staves or clods, or burnt in a fire of dried grass, or slaughtered like a beast. 3603. That Kshatriya acts contrary to his duty who dies in bed, discharging phlegm and urine, and moaning piteously. 3604. The ancients do not approve the conduct of a Kshatriya who dies with his body free from wounds. 3605. The death of Kshatriyas at home is not commended. It is poor and timid violation of duty for proud heroes. 3606. Such a man groans, 'This is suffering, this is great pain, and most miserable,'—with dejected look, fetid, lamenting his kinsman (3607), he envies those who are free from disease, and again and again longs for death. A proud haughty hero ought not to die such a death. 3608. A Kshatriya ought to die after fighting in battle surrounded by his relations, and wounded by sharp weapons. 3609. For a hero, impelled by desire and anger, fights fiercely and never feels that his limbs are smitten by his foes. 3610. Dying a laudable death, honoured by men, and having fully performed his duty, he goes to the world of Indra. 3611. Engaging with all his skill in the conflict, and never turning his back, but dying in the fray, he goes to the realm where Indra dwells."

Similarly, in xii. 2909, a king mentions it as a merit that there is no space of two fingers on his body which has not been pierced by weapons, while he fought from duty.

xii. 2946. "Reverence and blessing be their lot who sacrifice their bodies, when restraining the enemies of the Brahmanas. . . . Manu declared that those heroes attain to heaven and conquer (for themselves) the world of Brahma."

xii. 3503. "Let a king who is devoted to his duty die in battle. Everything ends in death. Nothing is free from suffering."

xii. 3591. "The celestials do not behold on earth anything superior to him who, fearless, scatters his enemies, and receives their arrows. He attains to as many undecaying worlds, yielding all objects of enjoyment, as his body is pierced by weapons in combat : with the blood which flows from his body in battle, and occasions suffering, he is delivered from all his sins."

xii. 3655. "Do not lament a hero slain in battle ; for he enjoys blessedness in heaven. They do not seek to supply the slain man with food, or water, or bathing, or (regard him as ?) impure. Hear of what kind are the realms to which he attains. Thousands of fair Apsarases run up to the hero slain in battle, crying, 'Be my husband.'"

xii. 3636. "The great Janaka, the king of Mithila, who knew all truths, showed his warriors heaven and hell. 'Behold, these are the shining worlds of the fearless, filled with the maidens of the Gandharvas, yielding all enjoyments, and undecaying. These are the hells which await those who flee (in battle),' " &c. &c.]

No. VI.

CONVENTION SIGNED AT GENEVA, AUGUST 22, 1864,
FOR THE AMELIORATION OF THE CONDITION OF
THE WOUNDED IN ARMIES IN THE FIELD.

Art. I. Les ambulances et les hôpitaux militaires seront reconnus neutres, et, comme tels, protégés et respectés par les belligérants aussi longtemps qu'il s'y trouvera des malades ou des blessés.

La neutralité cesserait si ces ambulances ou ces hôpitaux étaient gardés par une force militaire.

Art. II. Le personnel des hôpitaux et des ambulances, comprenant l'intendance, les services de santé, d'administration, de transport des blessés, ainsi que les aumôniers, participera au bénéfice de la neutralité lorsqu'il fonctionnera, et tant qu'il restera des blessés à relever ou à secourir.

Art. III. Les personnes désignées dans l'Article précédent pourront, même après l'occupation par l'ennemi, continuer à remplir leurs fonctions dans l'hôpital ou l'ambulance qu'elles desservent, ou se retirer pour rejoindre le corps auquel elles appartiennent.

Dans ces circonstances, lorsque ces personnes cesseront leurs

fonctions, elles seront remises aux avant-postes ennemis, par les soins de l'armée occupante.

Art. IV. Le matériel des hôpitaux militaires demeurant soumis aux lois de la guerre, les personnes attachées à ces hôpitaux ne pourront, en se retirant, emporter que les objets, qui sont leur propriété particulière.

Dans les mêmes circonstances, au contraire, l'ambulance conservera son matériel.

Art. V. Les habitants du pays qui porteront secours aux blessés seront respectés, et demeureront libres. Les Généraux des Puissances belligérantes auront pour mission de prévenir les habitants de l'appel fait à leur humanité, et de la neutralité qui en sera la conséquence.

Tout blessé recueilli et soigné dans une maison y servira de sauvegarde. L'habitant qui aura recueilli chez lui des blessés sera dispensé du logement des troupes, ainsi que d'une partie des contributions de guerre qui seraient imposées.

Art. VI. Les militaires blessés ou malades seront recueillis et soignés, à quelque nation qu'ils appartiendront.

Les Commandants en chef auront la faculté de remettre immédiatement aux avant-postes ennemis, les militaires blessés pendant le combat, lorsque les circonstances le permettront, et du consentement des deux partis.

Seront renvoyés dans leurs pays ceux qui, après guérison, seront reconnus incapables de servir.

Les autres pourront être également renvoyés, à la condition de ne pas reprendre les armes pendant la durée de la guerre.

Les évacuations, avec le personnel qui les dirige, seront couvertes par une neutralité absolue.

Art. VII. Un drapeau distinctif et uniforme sera adopté pour les hôpitaux, les ambulances, et les évacuations. Il

devra être, en tout circonstance, accompagné du drapeau national.

Un brassard sera également admis pour le personnel neutralisé, mais la délivrance en sera laissée à l'autorité militaire.

Le drapeau et le brassard porteront croix rouge sur fond blanc.

Art. VIII. Les détails d'exécution de la présente Convention seront réglés par les Commandants-en-chef des armées belligérantes, d'après les instructions de leurs Gouvernements respectifs, et conformément aux principes généraux énoncés dans cette Convention.

Art. IX. Les Hautes Puissances Contractantes sont convenues de communiquer la présente Convention aux Gouvernements, qui n'ont pu envoyer des Plénipotentiaires à la Conférence internationale de Genève, en les invitant à y accéder ; le Protocole est à cet effet laissé ouvert.

Additional Articles signed at Geneva, the 20th October 1868.

Art. 1. Le personnel désigné dans l'article deux de la Convention continuera, après l'occupation par l'ennemi, à donner, dans la mesure des besoins, ses soins aux malades et aux blessés de l'ambulance ou de l'hôpital qu'il dessert.

Lorsqu'il demandera à se retirer, le commandant des troupes occupantes fixera le moment de ce départ, qu'il ne pourra toutefois différer que pour une courte durée en cas de nécessités militaires.

Art. 2. Des dispositions devront être prises par les Puissances belligérantes pour assurer au personnel neutralisé, tombé entre les mains de l'armée ennemie, la jouissance intégrale de son traitement.

Art. 3. Dans les conditions prévues par les articles un et quatre de la Convention, la dénomination d'ambulance s'applique aux hôpitaux de campagne et autres établissements temporaires qui suivent les troupes sur les champs de bataille pour y recevoir des malades et des blessés.

Art. 4. Conformément à l'esprit de l'article cinq de la Convention et aux réserves mentionnées au Protocole de 1864, il est expliqué que pour la répartition des charges relatives au logement de troupes et aux contributions de guerre, il ne sera tenu compte que dans la mesure de l'équité du zèle charitable déployé par les habitants.

Art. 5. Par extension de l'article six de la Convention, il est stipulé que sous la réserve des officiers dont la possession importerait au sort des armes, et dans les limites fixées par le deuxième paragraphe de cet article, les blessés tombés entre les mains de l'ennemi, lors même qu'ils ne seraient pas reconnus incapables de servir, devront être renvoyés dans leur pays après leur guérison, ou plus tôt si faire se peut, à la condition toutefois de ne pas reprendre les armes pendant la durée de la guerre.

Articles concernant la Marine.

Art. 6. Les embarcations qui, à leurs risques et périls, pendant et après le combat, recueillent ou qui, ayant recueilli des naufragés ou des blessés, les portent à bord d'un navire soit neutre, soit hospitalier, jouiront jusqu'à l'accomplissement de leur mission de la part de neutralité que les circonstances du combat et la situation des navires en conflit permettront de leur appliquer.

L'appréciation de ces circonstances est confiée à l'humanité de tous les combattants.

Les naufragés et les blessés ainsi recueillis et sauvés ne pourront servir pendant la durée de la guerre.

Art. 7. Le personnel religieux, médical et hospitalier de tout bâtiment capturé, est déclaré neutre. Il emporte, en quittant le navire, les objets et les instruments de chirurgie qui sont sa propriété particulière.

Art. 8. Le personnel désigné dans l'article précédent doit continuer à remplir ses fonctions sur le bâtiment capturé, concourir aux évacuations de blessés faites par le vainqueur, puis il doit être libre de rejoindre son pays, conformément au second paragraphe du premier article additionnel ci-dessus.

Les stipulations du deuxième article additionnel ci-dessus sont applicables au traitement de ce personnel.

Art. 9. Les bâtiments hôpitaux militaires restent soumis aux lois de la guerre, en ce qui concerne leur matériel ; ils deviennent la propriété du capteur, mais celui-ci, ne pourra les détourner de leur affectation spéciale pendant la durée de la guerre.

Art. 10. Tout bâtiment de commerce, à quelque nation qu'il appartienne, chargé exclusivement de blessés et de malades dont il opère l'évacuation, est couvert par la neutralité ; mais le fait seul de la visite, notifié sur le journal du bord, par un croiseur ennemi, rend les blessés et les malades incapables de servir pendant la durée de la guerre. Le croiseur aura même le droit de mettre à bord un commissaire pour accompagner le convoi et vérifier ainsi la bonne foi de l'opération.

Si le bâtiment de commerce contenait en outre un chargement, la neutralité le couvrirait encore, pourvu que ce chargement ne fût pas de nature à être confisqué par le belligérant.

Les belligérants conservent le droit d'interdire aux bâtiments neutralisés toute communication et toute direction, qu'ils jugeraient nuisibles au secret de leurs opérations.

Dans les cas urgents, des conventions particulières pourront être faites entre les commandants en chef pour neutraliser momentanément d'une manière spéciale les navires destinés à l'évacuation des blessés et des malades.

Art. 11. Les marins et les militaires embarqués, blessés ou malades, à quelque nation qu'ils appartiennent, seront protégés et soignés par les capteurs.

Leur repatriement est soumis aux prescriptions de l'article six de la Convention et de l'article cinq additionnel.

Art. 12. Le drapeau distinctif à joindre au pavillon national pour indiquer un navire ou une embarcation quelconque qui réclame le bénéfice de la neutralité, en vertu des principes de cette Convention, est le pavillon blanc à croix rouge.

Les belligérants exercent à cet égard toute vérification, qu'ils jugent nécessaire.

Les bâtiments hôpitaux militaires seront distingués par une peinture extérieure blanche avec batterie verte.

Art. 13. Les navires hospitaliers, équipés aux frais des sociétés de secours reconnues par les Gouvernements signataires de cette Convention, pourvus de commission émanée du Souverain qui aura donné l'autorisation expresse de leur armement, et d'un document de l'autorité maritime compétente, stipulant qu'ils ont été soumis à son contrôle pendant leur armement et à leur départ final, et qu'ils étaient alors uniquement appropriés au but de leur mission, seront considérés comme neutres ainsi que tout leur personnel.

Ils seront respectés et protégés par les belligérants.

Ils se feront reconnaître en hissant, avec leur pavillon national, le pavillon blanc à croix rouge. La marque distinctive de leur personnel dans l'exercice de ses fonctions sera un bras-

sard aux mêmes couleurs : leur peinture extérieure sera blanche avec batterie rouge.

Ces navires porteront secours et assistance aux blessés et aux naufragés des belligérants sans distinction de nationalité.

Ils ne devront gêner en aucune manière les mouvements des combattants.

Pendant et après le combat, ils agiront à leurs risques et périls.

Les belligérants auront sur eux le droit de contrôle et de visite ; ils pourront refuser leur concours, leur enjoindre de s'éloigner, et les détenir si la gravité des circonstances l'exigeait.

Les blessés et les naufragés recueillis par ces navires ne pourront être réclamés par aucun des combattants, et il leur sera imposé de ne pas servir pendant la durée de la guerre.

Art. 14. Dans les guerres maritimes, toute forte présomption, que l'un des belligérants profite du bénéfice de la neutralité dans un autre intérêt que celui des blessés et des malades, permet à l'autre belligérant, jusqu'à preuve du contraire, de suspendre la Convention à son égard.

Si cette présomption devient une certitude, la Convention peut même lui être dénoncée pour toute la durée de la guerre.

Paragraph accepted by the signatories of the foregoing additional Articles as additional to Article 9.

“ Toutefois, les navires impropres au combat que, pendant la paix, les Gouvernements auront officiellement déclaré être destinés à servir d'hôpitaux maritimes flottants, jouiront, pendant la guerre, de la neutralité complète au matériel comme au personnel, pourvu que leur armement soit uniquement approprié à leur destination spéciale.”

Paragraph proposed by the Russian Government in substitution of the following portion of the 12th of the Additional Articles—viz., “Les belligérants exercent à cet égard toute vérification, qu'ils jugent nécessaire,” and accepted in substitution of such portion by all the signatories of the Articles except Germany, France, and Italy, and except the Netherlands, which proposed to retain the original paragraph and to add to it the substitutory paragraph.

“A l'exception des navires hospitaliers qui se distinguent par une peinture extérieure spéciale, tout bâtiment de guerre ou de commerce ne peut se servir du pavillon blanc à croix rouge que dans le cas où il en aurait reçu l'autorisation par suite d'une entente préalable des belligérants. En l'absence d'une pareille entente, le bénéfice de la neutralité n'est accordé qu'à ceux des navires, dont le pavillon neutre tel qu'il est établi pour les bâtiments hospitaliers a été hissé avant qu'ils ne fussent aperçus par l'ennemi.”

No. VII.

FRENCH DECLARATION OF WAR AGAINST PRUSSIA.

On the 19th July, at half-past one, the French declaration of war was delivered at Berlin in the following form, constituting, according to Count Bismarck, the only written document which the Prussian Government has received from France since the Hohenzollern candidature:—

“The undersigned Chargé d’Affaires has the honour, in conformity with the orders he has received from his Gov-

ernment, to bring the following communication to the knowledge of his Excellency the Minister of Foreign Affairs of His Majesty the King of Prussia: 'The Government of His Majesty the Emperor of the French being unable to view the project of placing a Prussian Prince on the Spanish Throne otherwise than as an action directed against the security of the territories of France, found itself obliged to demand of His Majesty the King of Prussia the assurance that such a combination could not be realised with his consent. His Majesty having refused to give any such guarantee, and having, on the contrary, declared to the ambassador of His Majesty the Emperor of the French that he intends to reserve to himself for that eventuality, as for any other, the right to be guided by circumstances, the Imperial Government has been forced to see in this declaration an *arrière-pensée*, menacing alike to France and to the European equilibrium. The declaration has been rendered worse by the communication made to the different Cabinets of the King's refusal to receive the ambassador of the Emperor, and to enter into any further explanations with him. In consequence hereof, the French Government has thought it its duty to take immediate steps for the defence of its honour and its injured interests, and has resolved to adopt for this object all measures which the situation in which it has been placed renders necessary. It considers itself from this moment in a state of war against Prussia.'

"The undersigned has the honour to be your Excellency's,
&c., &c.

(Signed) LE SOURD.

"BERLIN, *July* 19, 1870."

No. VIII.

DECLARATION OF PARIS.

The Plenipotentiaries who signed the Treaty of Paris of the thirtieth of March, one thousand eight hundred and fifty-six, assembled in conference,

Considering :—

That maritime law in time of war has long been the subject of deplorable disputes ;

That the uncertainty of the law and of the duties in such a matter give rise to differences of opinion between neutrals and belligerents which may occasion serious difficulties, and even conflicts ; that it is consequently advantageous to establish a uniform doctrine on so important a point ;

That the Plenipotentiaries assembled in Congress at Paris cannot better respond to the intentions by which their Governments are animated, than by seeking to introduce into international relations fixed principles in this respect.

The above-mentioned Plenipotentiaries, being duly authorised, resolved to concert among themselves as to the means of attaining this object ; and having come to an agreement, have adopted the following solemn declaration :—

1. Privateering is and remains abolished ;
2. The neutral flag covers enemy's goods, with the exception of contraband of war ;
3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag ;
4. Blockades, in order to be binding, must be effective—that

is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Governments of the undersigned Plenipotentiaries engage to bring the present Declaration to the knowledge of the States which have not taken part in the Congress of Paris, and to invite them to accede to it.

Convinced that the maxims which they now proclaim cannot but be received with gratitude by the whole world, the undersigned Plenipotentiaries doubt not that the efforts of their Governments to obtain the general adoption thereof will be crowned with full success.

The present Declaration is not and shall not be binding, except between those Powers who have acceded, or shall accede, to it.

Done at Paris, the sixteenth of April, one thousand eight hundred and fifty-six.

(Signed) BUOL-SCHAUENSTEIN, &c.

No. IX.

BRITISH NEUTRALITY REGULATIONS, 1870.

NEUTRALITY PROCLAMATION.

Whereas We are happily at peace with all Sovereigns, Powers, and States;

And whereas, notwithstanding Our utmost exertions to preserve peace between all Sovereigns, Powers, and States, a state

of war unhappily exists between His Imperial Majesty the Emperor of the French and His Majesty the King of Prussia, and between their respective subjects and others inhabiting within their countries, territories, or dominions ;

And whereas We are on terms of friendship and amicable intercourse with each of these Sovereigns, and with their several subjects, and others inhabiting within their countries, territories, or dominions ;

And whereas great numbers of Our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges, within the dominions of each of the aforesaid Sovereigns, protected by the faith of Treaties between Us and each of the aforesaid Sovereigns ;

And whereas We, being desirous of preserving to Our subjects the blessings of peace, which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly or indirectly, in the war now unhappily existing between the said Sovereigns, their subjects and territories, and to remain at peace with, and to maintain a peaceful and friendly intercourse with each of them, and their respective subjects, and others inhabiting within any of their respective countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said state of war, unhappily existing between them ;

We, therefore, have thought fit, by and with the advice of Our Privy Council, to issue this Our Royal Proclamation.

And We do hereby strictly charge and command all Our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid war, and to abstain from violating or contravening either the laws

and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the fifty-ninth year of His Majesty King George the Third, entitled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes without His Majesty's license," it is amongst other things declared and enacted as follows:—
"That if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, shall, without the leave and license of His Majesty, for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship, or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign Prince, State, or Potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising, or assuming to exercise, any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store-ship, or with intent to cruise or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising, or assuming to exercise, the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country,

with whom His Majesty shall not then be at war, or shall, within the United Kingdom, or any of His Majesty's dominions, or in any settlement, colony, territory, island, or place, belonging or subject to His Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of His Majesty's Customs or Excise, or any officer of His Majesty's Navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise, or the laws of trade or navigation, to seize such ships and vessels aforesaid, and in such places, and in such manner, in which the officers of His Majesty's Customs or Excise, and the officers of His Majesty's Navy, are empowered respectively to make seizures under the laws of Customs and Excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to, or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the Revenues of Customs and Excise, or of the laws of trade and navigation."

And it is, in and by the said Act, further enacted, "That if any person in any part of the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions beyond the seas, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting, the warlike force of any ship or vessel of war, or cruizer, or other armed vessel, which, at the time of her arrival in any part of the United Kingdom, or any of His Majesty's dominions, was a ship of war, cruizer, or armed vessel, in the service of any foreign Prince, State, or Potentate, or of any person or persons exercising, or assuming to exercise, any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such Prince, State, or Potentate, or to the inhabitants of any colony, province, or part of any province or country, under the control of any person or persons so exercising, or assuming to exercise, the powers of government, every such person so offending shall be deemed guilty of a misdemeanour, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted."

Now, in order that none of Our subjects may unwarily render themselves liable to the penalties imposed by the said statute, We do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said statute, upon

pain of the several penalties by the said statute imposed, and of Our high displeasure.

And We do hereby further warn and admonish all Our loving subjects, and all persons whatsoever entitled to Our protection, to observe towards each of the aforesaid Sovereigns, their subjects and territories, and towards all belligerents whatsoever, with whom We are at peace, the duties of neutrality; and to respect, in all and each of them, the exercise of those belligerent rights which We and Our Royal Predecessors have always claimed to exercise.

And We do hereby further warn all Our loving subjects, and all persons whatsoever entitled to Our protection, that, if any of them shall presume in contempt of this Our Royal Proclamation, and of Our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign, in a war between other Sovereigns, or in violation or contravention of the law of nations in that behalf, as more especially by breaking, or endeavouring to break, any blockade lawfully and actually established by or on behalf of either of the said Sovereigns, by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usages of nations, for the use or service of either of the said Sovereigns, that all persons so offending, together with their ships and goods, will rightfully incur, and be justly liable to, hostile capture, and to the penalties denounced by the law of nations in that behalf.

And We do hereby give notice, that all Our subjects and persons entitled to Our protection who may misconduct themselves in the premises, will do so at their peril and of their own wrong; and that they will in no wise obtain any pro-

tection from Us against such capture or such penalties as aforesaid, but will, on the contrary, incur Our high displeasure by such misconduct.

*Letter addressed by Earl Granville to the Lords
Commissioners of the Admiralty.*

FOREIGN OFFICE, July 19, 1870.

MY LORDS,—Her Majesty being fully determined to observe the duties of neutrality during the existing state of war between the Emperor of the French and the King of Prussia, and being moreover resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's orders and directions:—

Her Majesty is pleased further to command that these rules shall be put in force in the United Kingdom, and in the Channel Islands, on and after the 26th of July instant, and in Her Majesty's territories and possessions beyond the seas, six days after the day when the governor, or other chief authority, of each of such territories or possessions respectively, shall have notified and published the same; stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

1. During the continuance of the present state of war, all ships of war of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies,

or of any waters subject to the territorial jurisdiction of the British Crown, as a station, or place of resort, for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment; and no ship of war of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war or a merchant-ship) shall have previously departed, until after the expiration of, at least, twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

2. If any ship of war of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom, and in the Channel Islands, and in the several colonies and foreign possessions and dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom or in the Channel Islands, or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessels shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use; and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters, for a longer period than

twenty-four hours after her necessary repairs shall have been completed. Provided, nevertheless, that in all cases in which there shall be any vessel (whether ships of war or merchant-ships) of the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether ship of war or merchant-ship) of the one belligerent, and the subsequent departure therefrom of any ship of war of the other belligerent; and the time hereby limited for the departure of such ships of war respectively shall always, in case of necessity, be extended so far as may be requisite for giving effect to this proviso, but no further or otherwise.

3. No ship of war of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and no coal shall again be supplied to any such ship of war in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

4. Armed ships of either party are interdicted from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or any of Her Majesty's colonies or possessions abroad.—I have, &c.,

GRANVILLE.

No. X.

BRITISH NAVAL PRIZE ACT, 1864.

Whereas it is expedient to enact permanently, with Amendments, such Provisions concerning Naval Prize, and Matters connected therewith, as have heretofore been usually passed at the Beginning of a War :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Naval Prize Act, 1864.
2. In this Act—

The Term “ the Lords of the Admiralty ” means the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral :

The Term “ the High Court of Admiralty ” means the High Court of Admiralty of *England* :

The Term “ any of Her Majesty's Ships of War ” includes any of Her Majesty's Vessels of War, and any hired armed Ship or Vessel in Her Majesty's Service :

The Term “ Officers and Crew ” includes Flag Officers, Commanders, and other Officers, Engineers, Seamen, Marines, Soldiers, and others on board any of Her Majesty's Ships of War :

The Term “ Ship ” includes Vessel and Boat, with the

Tackle, Furniture, and Apparel of the Ship, Vessel, or Boat :

The Term "Ship Papers" includes all Books, Passes, Sea Briefs, Charter Parties, Bills of Lading, Dockets, Letters, and other Documents and Writings delivered up or found on board a captured Ship :

The Term "Goods" includes all such Things as are by the Courts of Admiralty and Law of Nations the Subject of Adjudication as Prize (other than Ships).

I.—PRIZE COURTS.

3. The High Court of Admiralty, and every Court of Admiralty or of Vice-Admiralty, or other Court exercising Admiralty Jurisdiction in Her Majesty's Dominions, for the Time being authorised to take cognisance of and judicially proceed in Matters of Prize, shall be a Prize Court within the Meaning of this Act.

Every such Court, other than the High Court of Admiralty, is comprised in the Term "Vice-Admiralty Prize Court," when hereafter used in this Act.

High Court of Admiralty.

4. The High Court of Admiralty shall have Jurisdiction throughout Her Majesty's Dominions as a Prize Court.

The High Court of Admiralty as a Prize Court shall have Power to enforce any Order or Decree of a Vice-Admiralty Prize Court, and any Order or Decree of the Judicial Committee of the Privy Council in a Prize Appeal.

Appeal ; Judicial Committee.

5. An Appeal shall lie to Her Majesty in Council from any

Order or Decree of a Prize Court, as of Right in case of a Final Decree, and in other Cases with the Leave of the Court making the Order or Decree.

Every Appeal shall be made in such Manner and Form and subject to such Regulations (including Regulations as to Fees, Costs, Charges, and Expenses) as may for the Time being be directed by Order in Council, and in the Absence of any such Order, or so far as any such Order does not extend, then in such Manner and Form and subject to such Regulations as are for the Time being prescribed or in force respecting Maritime Causes of Appeal.

6. The Judicial Committee of the Privy Council shall have Jurisdiction to hear and report on any such Appeal, and may therein exercise all such Powers as for the time being appertain to them in respect of Appeals from any Court of Admiralty Jurisdiction, and all such Powers as are under this Act vested in the High Court of Admiralty, and all such Powers as were wont to be exercised by the Commissioners of Appeal in Prize Causes.

7. All Processes and Documents required for the Purposes of any such Appeal shall be transmitted to and shall remain in the Custody of the Registrar of Her Majesty in Prize Appeals.

8. In every such Appeal the usual Inhibition shall be extracted from the Registry of Her Majesty in Prize Appeals within Three Months after the Date of the Order or Decree appealed from if the Appeal be from the High Court of Admiralty, and within Six Months after that Date if it be from a Vice-Admiralty Prize Court.

The Judicial Committee may, nevertheless, on sufficient Cause shown, allow the Inhibition to be extracted and the

Appeal to be prosecuted after the Expiration of the respective Periods aforesaid.

[N.B. Appeal now lies to the ordinary Courts of Appeal.]

Vice-Admiralty Prize Courts.

9. Every Vice-Admiralty Prize Court shall enforce within its Jurisdiction all Orders and Decrees of the Judicial Committee in Prize Appeals and of the High Court of Admiralty in Prize Causes.

10. Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court a Salary not exceeding Five hundred Pounds a Year, payable out of Money provided by Parliament, subject to such Regulations as seem meet.

A Judge to whom a Salary is so granted shall not be entitled to any further Emolument, arising from Fees or otherwise, in respect of Prize Business transacted in his Court.

An Account of all such Fees shall be kept by the Registrar of the Court, and the Amount thereof shall be carried to and form Part of the Consolidated Fund of the United Kingdom.

11. In accordance, as far as Circumstances admit, with the Principles and Regulations laid down in the Superannuation Act, 1859, Her Majesty in Council may grant to the Judge of any Vice-Admiralty Prize Court an annual or other Allowance, to take effect on the Termination of his Service, and to be payable out of Money provided by Parliament.

12. The Registrar of every Vice-Admiralty Prize Court shall, on the First Day of *January* and First Day of *July* in every Year, make out a Return (in such Form as the Lords of the Admiralty from Time to Time direct) of all Cases adjudged in the Court since the last half-yearly Return, and shall with all convenient Speed send the same to the Registrar

of the High Court of Admiralty, who shall keep the same in the Registry of that Court, and who shall, as soon as conveniently may be, send a Copy of the Returns of each Half Year to the Lords of the Admiralty, who shall lay the same before both Houses of Parliament.

General.

13. The Judicial Committee of the Privy Council, with the Judge of the High Court of Admiralty, may from Time to Time frame General Orders for regulating (subject to the Provisions of this Act) the Procedure and Practice of Prize Courts, and the Duties and Conduct of the Officers thereof and of the Practitioners therein, and for regulating the Fees to be taken by the Officers of the Courts, and the Costs, Charges, and Expenses to be allowed to the Practitioners therein.

Any such General Orders shall have full Effect, if and when approved by Her Majesty in Council, but not sooner or otherwise.

Every Order in Council made under this Section shall be laid before both Houses of Parliament.

Every such Order in Council shall be kept exhibited in a conspicuous Place in each Court to which it relates.

14. It shall not be lawful for any Registrar, Marshal, or other Officer of any Prize Court, or for the Registrar of Her Majesty in Prize Appeals, directly or indirectly to act or be in any Manner concerned as Advocate, Proctor, Solicitor, or Agent, or otherwise, in any Prize Cause or Appeal, on pain of Dismissal or Suspension from Office, by Order of the Court or of the Judicial Committee (as the Case may require).

15. It shall not be lawful for any Proctor or Solicitor, or

Person practising as a Proctor or Solicitor, being employed by a Party in a Prize Cause or Appeal, to be employed or concerned, by himself or his Partner, or by any other Person, directly or indirectly, by or on behalf of any adverse Party in that Cause or Appeal, on pain of Exclusion or Suspension from Practice in Prize Matters, by Order of the Court or of the Judicial Committee (as the Case may require).

II.—PROCEDURE IN PRIZE CAUSES.

Proceedings by Captors.

16. Every ship taken as Prize, and brought into Port within the Jurisdiction of a Prize Court, shall forthwith, and without Bulk broken, be delivered up to the Marshal of the Court.

If there is no such Marshal, then the Ship shall be in like Manner delivered up to the principal Officer of Customs at the Port.

The Ship shall remain in the Custody of the Marshal, or of such Officer, subject to the Orders of the Court.

17. The Captors shall, with all practicable Speed after the Ship is brought into Port, bring the Ship Papers into the Registry of the Court.

The Officer in Command, or One of the Chief Officers of the capturing Ship, or some other Person who was present at the Capture, and saw the Ship Papers delivered up or found on board, shall make Oath that they are brought in as they were taken, without Fraud, Addition, Subduction, or Alteration, or else shall account on Oath to the Satisfaction of the Court for the Absence or altered Condition of the Ship Papers or any of them.

Where no Ship Papers are delivered up or found on board the captured Ship, the Officer in Command, or One of the Chief Officers of the capturing Ship, or some other Person who was present at the Capture, shall make Oath to that Effect.

18. As soon as the Affidavit as to Ship Papers is filed, a Monition shall issue, returnable within Twenty Days from the Service thereof, citing all Persons in general to show Cause why the captured Ship should not be condemned.

19. The Captors shall, with all practicable Speed after the captured Ship is brought into Port, bring Three or Four of the principal Persons belonging to the captured Ship before the Judge of the Court or some Person authorised in this Behalf, by whom they shall be examined on Oath on the Standing Interrogatories.

The Preparatory Examinations on the Standing Interrogatories shall, if possible, be concluded within Five Days from the Commencement thereof.

20. After the Return of the Monition, the Court shall, on Production of the Preparatory Examinations and Ship Papers, proceed with all convenient Speed either to condemn or to release the captured Ship.

21. Where, on Production of the Preparatory Examinations and Ship Papers, it appears to the Court doubtful whether the captured Ship is good Prize or not, the Court may direct further Proof to be adduced, either by Affidavit or by Examination of Witnesses, with or without Pleadings, or by Production of further Documents; and on such further Proof being adduced the Court shall with all convenient Speed proceed to Adjudication.

22. The foregoing Provisions, as far as they relate to the

Custody of the Ship, and to Examination on the Standing Interrogatories, shall not apply to Ships of War taken as Prize.

Claim.

23. At any Time before Final Decree made in the Cause, any Person claiming an Interest in the Ship may enter in the Registry of the Court a Claim, verified on Oath.

Within Five Days after entering the Claim the Claimant shall give Security for Costs in the Sum of Sixty Pounds ; but the Court shall have Power to enlarge the Time for giving Security, or to direct Security to be given in a larger Sum, if the Circumstances appear to require it.

Appraisement.

24. The Court may, if it thinks fit, at any Time direct that the captured Ship be appraised.

Every Appraisement shall be made by competent Persons sworn to make the same according to the best of their Skill and Knowledge.

Delivery on Bail.

25. After Appraisement, the Court may, if it thinks fit, direct that the captured Ship be delivered up to the Claimant, on his giving Security to the Satisfaction of the Court to pay to the Captors the appraised Value thereof in case of Condemnation.

Sale.

26. The Court may at any Time, if it thinks fit, on account of the Condition of the captured Ship, or on the Application

of a Claimant, order that the captured Ship be appraised as aforesaid (if not already appraised), and be sold.

27. On or after Condemnation the Court may, if it thinks fit, order that the Ship be appraised as aforesaid (if not already appraised), and be sold.

28. Every Sale shall be made by or under the Superintendence of the Marshal of the Court or of the Officer having the Custody of the captured Ship.

29. The Proceeds of any Sale, made either before or after Condemnation, and after Condemnation the appraised Value of the captured Ship, in case she has been delivered up to a Claimant on Bail, shall be paid under an Order of the Court either into the Bank of *England* to the Credit of Her Majesty's Paymaster-General, or into the Hands of an Official Accountant (belonging to the Commissariat or some other Department) appointed for this Purpose by the Commissioners of Her Majesty's Treasury or by the Lords of the Admiralty, subject in either Case to such Regulations as may from Time to Time be made, by Order in Council, as to the Custody and Disposal of Money so paid.

Small Armed Ships.

30. The Captors may include in One Adjudication any Number, not exceeding Six, of armed Ships not exceeding One hundred Tons each, taken within Three Months next before Institution of Proceedings.

Goods.

31. The foregoing Provisions relating to Ships shall extend and apply, *mutatis mutandis*, to Goods taken as Prize on

board Ship ; and the Court may direct such Goods to be unladen, inventoried, and warehoused.

Monition to Captors to proceed.

32. If the Captors fail to institute or to prosecute with Effect Proceedings for Adjudication, a Monition shall, on the Application of a Claimant, issue against the Captors, returnable within Six Days from the Service thereof, citing them to appear and proceed to Adjudication ; and on the Return thereof the Court shall either forthwith proceed to Adjudication or direct further Proof to be adduced as aforesaid, and then proceed to Adjudication.

Claim on Appeal.

33. Where any Person, not an original Party in the Cause, intervenes on Appeal, he shall enter a Claim, verified on Oath, and shall give Security for Costs.

III.—SPECIAL CASES OF CAPTURE.

Land Expeditions.

34. Where in an Expedition of any of Her Majesty's Naval or Naval and Military Forces against a Fortress or Possession on Land, Goods belonging to the State of the Enemy or to a Public Trading Company of the Enemy exercising Powers of Government are taken in the Fortress or Possession, or a Ship is taken in Waters defended by or belonging to the Fortress or Possession, a Prize Court shall have Jurisdiction as to the Goods or Ship so taken, and any Goods taken on board the Ship, as in case of Prize.

Conjunct Capture with Ally.

35. Where any Ship or Goods is or are taken by any of Her Majesty's Naval or Naval and Military Forces while acting in conjunction with any Forces of any of Her Majesty's Allies, a Prize Court shall have Jurisdiction as to the same as in case of Prize, and shall have Power, after Condemnation, to apportion the due Share of the Proceeds to Her Majesty's Ally, the proportionate Amount and the Disposition of which Share shall be such as may from Time to Time be agreed between Her Majesty and Her Majesty's Ally.

Joint Capture.

36. Before Condemnation, a Petition on behalf of asserted joint Captors shall not (except by special Leave of the Court) be admitted, unless and until they give Security to the Satisfaction of the Court, to contribute to the actual Captors a just Proportion of any Costs, Charges, or Expenses or Damages that may be incurred by or awarded against the actual Captors on account of the Capture and Detention of the Prize.

After Condemnation, such a Petition shall not (except by special Leave of the Court) be admitted unless and until the asserted joint Captors pay to the actual Captors a just Proportion of the Costs, Charges, and Expenses incurred by the actual Captors in the Case, and give such Security as aforesaid, and show sufficient Cause to the Court why their Petition was not presented before Condemnation.

Provided, that nothing in the present Section shall extend to the asserted Interest of a Flag Officer claiming to share by virtue of his Flag.

Offences against Law of Prize.

37. A Prize Court, on Proof of any Offence against the Law of Nations, or against this Act, or any Act relating to Naval Discipline, or against any Order in Council or Royal Proclamation, or of any Breach of Her Majesty's Instructions relating to Prize, or of any Act of Disobedience to the Orders of the Lords of the Admiralty, or to the Command of a Superior Officer, committed by the Captors in relation to any Ship or Goods taken as Prize, or in relation to any Person on board any such Ship, may, on Condemnation, reserve the Prize to Her Majesty's Disposal, notwithstanding any Grant that may have been made by Her Majesty in favour of Captors.

Pre-emption.

38. Where a Ship of a Foreign Nation passing the Seas laden with Naval or Victualling Stores intended to be carried to a Port of any Enemy of Her Majesty is taken and brought into a Port of the United Kingdom, and the Purchase for the Service of Her Majesty of the Stores on board the Ship appears to the Lords of the Admiralty expedient without the Condemnation thereof in a Prize Court, in that Case the Lords of the Admiralty may purchase, on the Account or for the Service of Her Majesty, all or any of the Stores on board the Ship; and the Commissioners of Customs may permit the Stores purchased to be entered and landed within any Port.

Capture by Ship other than a Ship of War.

39. Any Ship or Goods taken as Prize by any of the Officers and Crew of a Ship other than a Ship of War of Her Majesty shall, on Condemnation, belong to Her Majesty in Her Office of Admiralty.

IV.—PRIZE SALVAGE.

40. Where any Ship or Goods belonging to any of Her Majesty's Subjects, after being taken as Prize by the Enemy, is or are retaken from the Enemy by any of Her Majesty's Ships of War, the same shall be restored by Decree of a Prize Court to the Owner, on his paying as Prize Salvage One Eighth Part of the Value of the Prize to be decreed and ascertained by the Court, or such Sum not exceeding One Eighth Part of the estimated Value of the Prize as may be agreed on between the Owner and the Re-captors, and approved by Order of the Court: Provided, that where the Re-capture is made under Circumstances of special Difficulty or Danger, the Prize Court may, if it thinks fit, award to the Re-captors as Prize Salvage a larger Part than One Eighth Part, but not exceeding in any Case One Fourth Part, of the Value of the Prize.

Provided also, that where a Ship after being so taken is set forth or used by any of Her Majesty's Enemies as a Ship of War, this Provision for Restitution shall not apply, and the Ship shall be adjudicated on as in other Cases of Prize.

41. Where a Ship belonging to any of Her Majesty's Subjects, after being taken as Prize by the Enemy, is retaken from the Enemy by any of Her Majesty's Ships of War, she may, with the Consent of the Re-captors, prosecute her Voyage, and it shall not be necessary for the Re-captors to proceed to Adjudication till her Return to a Port of the United Kingdom.

The Master or Owner, or his Agent, may, with the Consent of the Re-captors, unload and dispose of the Goods on board the Ship before Adjudication.

In case the Ship does not, within Six Months, return to a Port of the United Kingdom, the Re-captors may nevertheless institute Proceedings against the Ship or Goods in the High Court of Admiralty, and the Court may thereupon award Prize Salvage as aforesaid to the Re-captors, and may enforce Payment thereof, either by Warrant of Arrest against the Ship or Goods, or by Monition and Attachment against the Owner.

V.—PRIZE BOUNTY.

42. If, in relation to any War, Her Majesty is pleased to declare, by Proclamation or Order in Council, Her Intention to grant Prize Bounty to the Officers and Crews of Her Ships of War, then such of the Officers and Crew of any of Her Majesty's Ships of War as are actually present at the taking or destroying of any armed Ship of any of Her Majesty's Enemies shall be entitled to have distributed them among as Prize Bounty a Sum calculated at the Rate of Five Pounds for each Person on board the Enemy's Ship at the Beginning of the Engagement.

43. The Number of the Persons so on board the Enemy's Ship shall be proved in a Prize Court, either by the Examinations on Oath of the Survivors of them, or of any Three or more of the Survivors, or if there is no Survivor by the Papers of the Enemy's Ship, or by the Examinations on Oath of Three or more of the Officers and Crew of Her Majesty's Ship, or by such other Evidence as may seem to the Court sufficient in the Circumstances.

The Court shall make a Decree declaring the Title of the Officers and Crew of Her Majesty's Ship to the Prize Bounty, and stating the Amount thereof.

The Decree shall be subject to Appeal as other Decrees of the Court.

44. On Production of an Official Copy of the Decree the Commissioners of Her Majesty's Treasury shall, out of Money provided by Parliament, pay the Amount of Prize Bounty decreed, in such Manner as any Order in Council may from Time to Time direct.

VI.—MISCELLANEOUS PROVISIONS.

Ransom.

45. Her Majesty in Council may from Time to Time, in relation to any War, make such Orders as may seem expedient, according to Circumstances, for prohibiting or allowing, wholly or in certain Cases, or subject to any Conditions or Regulations or otherwise, as may from Time to Time seem meet, the ransoming or the entering into any Contract or Agreement for the ransoming of any Ship or Goods belonging to any of Her Majesty's Subjects, and taken as Prize by any of Her Majesty's Enemies.

Any Contract or Agreement entered into, and any Bill, Bond, or other Security given for Ransom of any Ship or Goods, shall be under the exclusive Jurisdiction of the High Court of Admiralty as a Prize Court (subject to Appeal to the Judicial Committee of the Privy Council), and if entered into or given in contravention of any such Order in Council shall be deemed to have been entered into or given for an illegal Consideration.

If any Person ransoms or enters into any Contract or Agreement for ransoming any Ship or Goods, in contravention of any such Order in Council, he shall for every such Offence

be liable to be proceeded against in the High Court of Admiralty at the Suit of Her Majesty in Her Office of Admiralty, and on Conviction to be fined, in the Discretion of the Court, any Sum not exceeding Five hundred Pounds.

Convoy.

46. If the Master or other Person having the Command of any Ship of any of Her Majesty's Subjects, under the Convoy of any of Her Majesty's Ships of War, wilfully disobeys any lawful Signal, Instruction, or Command of the Commander of the Convoy, or without Leave deserts the Convoy, he shall be liable to be proceeded against in the High Court of Admiralty at the Suit of Her Majesty in Her Office of Admiralty, and upon Conviction to be fined, in the Discretion of the Court, any Sum not exceeding Five hundred Pounds, and to suffer Imprisonment for such Time, not exceeding One Year, as the Court may adjudge.

Customs Duties and Regulations.

47. All Ships and Goods taken as Prize and brought into a Port of the United Kingdom shall be liable to and be charged with the same Rates and Charges and Duties of Customs as under any Act relating to the Customs may be chargeable on other Ships and Goods of the like description; and

All Goods brought in as Prize, which would on the voluntary Importation thereof be liable to Forfeiture or subject to any Restriction under the Laws relating to the Customs, shall be deemed to be so liable and subject, unless the Commissioners of Customs see fit to authorise the Sale or Delivery thereof for Home Use or Exportation, unconditionally or subject to such Conditions and Regulations as they may direct.

48. Where any Ship or Goods taken as Prize is or are brought into a Port of the United Kingdom, the Master or other Person in charge or Command of the Ship which has been taken or in which the Goods are brought shall, on Arrival at such Port, bring to at the proper Place of Discharge, and shall, when required by any Officer of Customs, deliver an Account in Writing under his Hand concerning such Ship and Goods, giving such Particulars relating thereto as may be in his Power, and shall truly answer all Questions concerning such Ship or Goods asked by any such Officer, and in default shall forfeit a Sum not exceeding One hundred Pounds, such Forfeiture to be enforced as Forfeitures for Offences against the Laws relating to the Customs are enforced, and every such Ship shall be liable to such Searches as other Ships are liable to, and the Officers of the Customs may freely go on board such Ship and bring to the Queen's Warehouse any Goods on board the Same, subject, nevertheless, to such Regulations in respect of Ships of War belonging to Her Majesty as shall from Time to Time be issued by the Commissioners of Her Majesty's Treasury.

49. Goods taken as Prize may be sold either for Home Consumption or for Exportation; and if in the former Case the Proceeds thereof, after Payment of Duties of Customs, are insufficient to satisfy the just and reasonable Claims thereon, the Commissioners of Her Majesty's Treasury may remit the Whole or such Part of the said Duties as they see fit.

Perjury.

50. If any Person wilfully and corruptly swears, declares, or affirms falsely in any Prize Cause or Appeal, or in any Proceeding under this Act, or in respect of any Matter required

by this Act to be verified on Oath, or suborns any other Person to do so, he shall be deemed guilty of Perjury, or of Subornation of Perjury (as the Case may be), and shall be liable to be punished accordingly.

Limitation of Actions, &c.

51. Any Action or Proceeding shall not lie in any Part of Her Majesty's Dominions against any Person acting under the Authority or in the Execution or intended Execution or in pursuance of this Act for any alleged Irregularity or Trespass, or other Act or Thing done or omitted by him under this Act, unless Notice in Writing (specifying the Cause of the Action or Proceeding) is given by the intending Plaintiff or Prosecutor to the intended Defendant One Month at least before the Commencement of the Action or Proceeding, nor unless the Action or Proceeding is commenced within Six Months next after the Act or Thing complained of is done or omitted, or, in case of a Continuation of Damage, within Six Months next after the doing of such Damage has ceased.

In any such Action the Defendant may plead generally that the Act or Thing complained of was done or omitted by him when acting under the Authority or in the Execution or intended Execution or in pursuance of this Act, and may give all special Matter in Evidence; and the Plaintiff shall not succeed if Tender of sufficient Amends is made by the Defendant before the Commencement of the Action; and in case no Tender has been made, the Defendant may, by Leave of the Court in which the Action is brought, at any Time pay into Court such sum of Money as he thinks fit, whereupon such Proceeding and Order shall be had and made in and by the Court as may be had and made on the Payment of Money

into Court in an ordinary Action; and if the Plaintiff does not succeed in the Action, the Defendant shall receive such full and reasonable Indemnity as to all Costs, Charges, and Expenses incurred in and about the Action as may be taxed and allowed by the proper Officer, subject to Review; and though a Verdict is given for the Plaintiff in the Action he shall not have Costs against the Defendant, unless the Judge before whom the Trial is had certifies his Approval of the Action.

Any such Action or Proceeding against any Person in Her Majesty's Naval Service, or in the Employment of the Lords of the Admiralty, shall not be brought or instituted elsewhere than in the United Kingdom.

Petitions of Right.

52. A Petition of Right, under The Petitions of Right Act, 1860, may, if the Suppliant thinks fit, be intituled in the High Court of Admiralty, in case the Subject Matter of the Petition or any material Part thereof arises out of the Exercise of any Belligerent Right on Behalf of the Crown, or would be cognizable in a Prize Court within Her Majesty's Dominions if the same were a Matter in dispute between private Persons.

Any Petition of Right under the last-mentioned Act, whether intituled in the High Court of Admiralty or not, may be prosecuted in that Court, if the Lord Chancellor thinks fit so to direct.

The Provisions of this Act relative to Appeal, and to the framing and Approval of General Orders for regulating the Procedure and Practice of the High Court of Admiralty, shall extend to the Case of any such Petition of Right intituled or

directed to be prosecuted in that Court ; and, subject thereto, all the Provisions of the Petitions of Right Act, 1860, shall apply, *mutatis mutandis*, in the Case of any such Petition of Right ; and for the Purposes of the present Section the Terms " Court " and " Judge " in that Act shall respectively be understood to include and to mean the High Court of Admiralty and the Judge thereof, and other Terms shall have the respective Meanings given to them in that Act.

Orders in Council.

53. Her Majesty in Council may from Time to Time make such Orders in Council as seem meet for the better Execution of this Act.

54. Every Order in Council under this Act shall be published in the *London Gazette*, and shall be laid before both Houses of Parliament within Thirty Days after the making thereof, if Parliament is then sitting, and, if not, then within Thirty Days after the next Meeting of Parliament.

Savings.

55. Nothing in this Act shall—

- (1.) give to the Officers and Crew of any of Her Majesty's Ships of War any Right or Claim in or to any Ship or Goods taken as Prize or the Proceeds thereof, it being the Intent of this Act that such Officers and Crews shall continue to take only such Interest (if any) in the Proceeds of Prizes as may be from Time to Time granted to them by the Crown ; or
- (2.) affect the Operation of any existing Treaty or Convention with any Foreign Power ; or
- (3.) take away or abridge the Power of the Crown to enter

into any Treaty or Convention with any Foreign Power containing any Stipulation that may seem meet concerning any Matter to which this Act relates ; or

- (4.) take away, abridge, or control, further or otherwise than as expressly provided by this Act, any Right, Power, or Prerogative of Her Majesty the Queen in right of Her Crown, or in right of Her Office of Admiralty, or any Right or Power of the Lord High Admiral of the United Kingdom, or of the Commissioners for executing the Office of Lord High Admiral ;
or

- (5.) take away, abridge, or control, further or otherwise than as expressly provided by this Act, the Jurisdiction or Authority of a Prize Court to take cognizance of and judicially proceed upon any Capture, Seizure, Prize, or Reprisal of any Ship or Goods, and to hear and determine the same, and, according to the Course of Admiralty and the Law of Nations, to adjudge and condemn any Ship or Goods, or any other Jurisdiction or Authority of or exerciseable by a Prize Court.

Commencement.

56. This Act shall commence on the commencement of the Naval Agency and Distribution Act, 1864.

No. XI.

FOREIGN ENLISTMENT ACT, 1819.¹

An Act to prevent the enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the fitting out or equipping, in His Majesty's dominions, Vessels for Warlike Purposes without His Majesty's Licence.—[3d July 1819.]

‘Whereas the Enlistment or Engagement of His Majesty’s subjects to serve in War in Foreign Service, without His Majesty’s Licence, and the fitting out and equipping and arming of Vessels by His Majesty’s subjects, without His Majesty’s licence, for Warlike Operations in or against the Dominions or Territories of any Foreign Prince, State, Potentate, or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or Part of any Province, or against the Ships, Goods, or Merchandise of any Foreign Prince, State, Potentate, or Persons as aforesaid, or their Subjects, may be prejudicial to and tend to endanger the Peace and Welfare of this Kingdom: And whereas the Laws in force are not sufficiently effectual for preventing the same’: Be it therefore enacted by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, an Act passed in the Ninth Year of the Reign of His late Majesty

¹ The American Foreign Enlistment Act of 1794, c. 50, will be found in the Statutes at large, vol. i. p. 381, and that of 1818, c. 88, *ib.* vol. iii. p. 447.

King George the Second, intituled "An Act to prevent the listing His Majesty's Subjects to serve as Soldiers without His Majesty's Licence;" and also an Act passed in the Twenty-ninth Year of the reign of His said late Majesty King George the Second, intituled "An Act to prevent His Majesty's subjects from serving as Officers under the French King; and for better enforcing an Act passed in the Ninth Year of His present Majesty's reign, to prevent the enlisting His Majesty's subjects to serve as Soldiers without His Majesty's Licence; and for obliging such of His Majesty's subjects as shall accept Commissions in the Scotch Brigade in the service of the States General of the United Provinces, to take the Oaths of Allegiance and Abjuration;" and also an Act passed in Ireland in the Eleventh Year of the reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing the enlisting of His Majesty's Subjects to serve as Soldiers in Foreign Service without His Majesty's Licence;" and also an Act passed in Ireland in the Nineteenth Year of the reign of His said late Majesty King George the Second, intituled "An Act for the more effectual preventing His Majesty's Subjects from entering into Foreign Service," and for publishing an Act of the Seventh Year of King William the Third, intituled 'An Act to prevent Foreign Education;' and all and every the Clauses and Provisions in the said several Acts contained, shall be and the same are hereby repealed.

9 G. 2, c.
30.29 G. 2, c.
17.Irish Act,
11 G. 2.Irish Act,
19 G. 2.Recited
Acts re-
pealed.

2. And be it further declared and enacted, That if any natural-born Subject of His Majesty, His Heirs and Successors, without the Leave or Licence of His Majesty, his Heirs or Successors, for that Purpose first had and obtained, under the Sign Manual of His Majesty, his Heirs or Succes-

Subjects
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or engag-
ing to en-
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sors, or signified by Order in Council, or by Proclamation of His Majesty, his Heirs or Successors, shall take or accept, or shall agree to take or accept, any Military Commission, or shall otherwise enter into the Military Service as a Commissioned or Non-Commissioned Officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a Soldier, or to be employed or shall serve in any Warlike or Military Operation, in the Service of or for or under or in aid of any Foreign Prince, State, Potentate, Colony, Province, or Part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or part of any Province or People, either as an Officer or Soldier, or in any other Military Capacity; or if any natural-born Subject of His Majesty shall, without such Leave or Licence as aforesaid, accept, or agree to take or accept, any Commission, Warrant, or Appointment as an Officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a Sailor or Marine, or to be employed, or engaged, or shall serve in and on board any Ship or Vessel of War, or in and on board any Ship or Vessel used or fitted out, or equipped or intended to be used for any Warlike Purpose, in the Service of or for or under or in aid of any Foreign Power, Prince, State, Potentate, Colony, Province, or Part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or Part of any Province or People; or if any natural-born Subject of His Majesty shall, without such Leave and Licence as aforesaid, engage, contract, or agree to go, or shall go to any Foreign State, Country, Colony, Province, or Part of any Province, or to any

Place beyond the Seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any War-like or Military Operation whatever, whether by Land or by Sea, in the Service of or for or under or in aid of any Foreign Prince, State, Potentate, Colony, Province, or Part of any Province or People, or in the Service of or for or under or in aid of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Country, Colony, Province, or Part of any Province or People, either as an Officer or a Soldier, or in any other Military Capacity, or as an Officer or Sailor, or Marine, in any such Ship or Vessel as aforesaid, although no enlisting Money or Pay or Reward shall have been or shall be in any or either of the Cases aforesaid actually paid to or received by him, or by any Person to or for his Use or Benefit; or if any Person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's Dominions elsewhere, or in any Country, Colony, Settlement, Island, or Place belonging to or subject to His Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure any Person or Persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such Service or Employment as aforesaid, as an Officer, Soldier, Sailor, or Marine, either in Land or Sea Service, for or under or in aid of any Foreign Prince, State, Potentate, Colony, Province, or Part of any Province or People, or for or under or in aid of any Person or Persons exercising or assuming to exercise any Powers of Government as aforesaid, or to go or to agree to go or embark from any part of His Majesty's Dominions for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether

All persons retaining or procuring others to enlist, guilty of the like offence.

any enlisting Money, Pay, or Reward shall have been or shall be actually given or received, or not; in any or either of such Cases, every Person so offending shall be deemed guilty of a Misdemeanor, and upon being convicted thereof, upon any Information or Indictment, shall be punishable by Fine and Imprisonment, or either of them, at the Discretion of the Court before which such Offender shall be convicted.

Act not to
extend to
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fied.

3. Provided always, and be it enacted, That nothing in this Act contained shall extend or be construed to extend to render any Person or Persons liable to any Punishment or Penalty under this Act, who at any time before the first day of August One thousand eight hundred and nineteen, within any Part of the United Kingdom, or of the Islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the first day of November One thousand eight hundred and nineteen, in any part or place out of the United Kingdom, or of the said Islands, shall have taken or accepted, or agreed to take or accept any Military Commission, or shall have otherwise enlisted into any Military Service as a Commissioned or Non-Commissioned Officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist or to enter himself to serve as a Soldier, or shall have served, or having so served shall, after the said first day of August One thousand eight hundred and nineteen, continue to serve in any Warlike or Military Operation, either as an Officer or Soldier, or in any other Military Capacity, or shall have accepted, or agreed to take or accept any Commission, Warrant, or Appointment as an Officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a Sailor, or Marine, or shall have been employed or engaged, or shall have served, or having so served shall, after the said

First Day of August, continue to serve in and on board any Ship or Vessel of War, used or fitted out, or equipped or intended for any Warlike Purpose; or shall have engaged, or contracted or agreed to go, or shall have gone to, or having so gone to shall, after the said First Day of August, continue in any Foreign State, Country, Colony, Province, or Part of a Province, or to or in any Place beyond the Seas, unless such Person or Persons shall embark at or proceed from some Port or Place within the United Kingdom, or the Islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an Officer, Soldier, Sailor, or Marine, contrary to the provisions of this Act, after the said First Day of August, or shall embark or proceed from some Port or Place out of the United Kingdom, or the Islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said First Day of November, or who shall before the passing of this Act, and within the said United Kingdom, or the said Islands, or before the First Day of November One thousand eight hundred and nineteen, in any Port or Place out of the said United Kingdom, or the said Islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any Person or Persons whatever, to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid, as an Officer, Soldier, Sailor, or Marine, either in Land or Sea Service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged, or employed, contrary to the prohibitions respectively in this Act contained, anything in this Act contained to the contrary in any wise notwithstanding; but that all and every such Persons and Person shall be in such State and Condition, and

no other, and shall be liable to such Fines, Penalties, Forfeitures, and Disabilities, and none other, as such Person or Persons was or were liable and subject to before the passing of this Act, and as such Person or Persons would have been in, and been liable and subject to, in case this Act and the said recited Acts by this Act repealed had not been passed or made.

Justices to
issue war-
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offenders.

4. And be it further enacted, That it shall and may be lawful for any Justice of the Peace residing at or near to any Port or Place within the United Kingdom of Great Britain and Ireland, where any offence made punishable by this Act as a misdemeanor shall be committed, on information on oath of any such Offence, to issue his Warrant for the Apprehension of the Offender, and to cause him to be brought before such Justice, or any Justice of the Peace; and it shall be lawful for the Justice of the Peace before whom such Offender shall be brought, to examine into the nature of the Offence upon Oath, and to commit such Person to Gaol, there to remain until delivered by due course of Law, unless such Offender shall give Bail, to the Satisfaction of the said Justice, to appear and answer to any Information or Indictment to be preferred against him, according to Law, for the said Offence; and that all such Offences which shall be committed within that Part of the United Kingdom called England, shall and may be proceeded and tried in His Majesty's Court of King's Bench at Westminster, and the Venue in such case laid at Westminster, or at the Assizes or Session of Oyer and Terminer and Gaol Delivery, or at any Quarter or General Sessions of the Peace in and for the County or Place where such offence was committed; and that all such Offences which shall be committed within that Part of the United Kingdom

Where
offences
shall be
tried.

called Ireland, shall and may be prosecuted in His Majesty's Court of King's Bench at Dublin, and the Venue be laid at Dublin, or at any Assizes or Session of Oyer and Terminer and Gaol Delivery, or at any Quarter or General Sessions of the Peace in and for the County or Place where such Offence was committed; and all such Offences as shall be committed in Scotland, shall and may be prosecuted in the Court of Justiciary in Scotland, or any other Court competent to try Criminal Offences committed within the County, Shire, or Stewartry within which such Offence was committed; and where any Offence made punishable by this Act as a Misdemeanor shall be committed out of the said United Kingdom, it shall be lawful for any Justice of the Peace residing near to the Port or Place where such Offence shall be committed, on Information on Oath of any such Offence, to issue his Warrant for the Apprehension of the Offender, and to cause him to be brought before such Justice, or any other Justice of the Peace for such Place; and it shall be lawful for the Justice of the Peace before whom such Offender shall be brought, to examine into the nature of the Offence upon Oath, and to commit such Person to Gaol, there to remain till delivered by due Course of Law, or otherwise to hold such Offender to Bail to answer for such Offence in the Superior Court competent to try and having Jurisdiction to try Criminal Offences committed in such Port or Place; and all such Offences committed at any Place out of the said United Kingdom shall and may be prosecuted and tried in any superior Court of His Majesty's dominions competent to try, and having Jurisdiction to try Criminal Offences committed at the Place where such Offence shall be committed.

5. And be it further enacted, That in case any Ship or ^{Vessels} with per-

sous on
board en-
gaged in
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service,
may be de-
tained at
any port in
His Majes-
ty's domin-
ions.

Vessel in any Port or Place within His Majesty's Dominions shall have on board any such Person or Persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from His Majesty's Dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any Foreign Prince, State, or Potentate, Colony, Province, or Part of any Province or People, or of any Person or Persons exercising or assuming to exercise the Powers of Government in or over any Foreign Colony, Province, or Part of any Province or People, either as an Officer, Soldier, Sailor, or Marine, contrary to the provisions of this Act, it shall be lawful for any of the Principal Officers of His Majesty's Customs, where any such Officers of the Customs shall be, and in any part of His Majesty's Dominions in which there are no Officers of His Majesty's Customs, for any Governor or Persons having the Chief Civil Command, upon Information on Oath given before them respectively, which Oath they are hereby respectively authorised and empowered to administer, that such Person or Persons as aforesaid is or are on board such Ship or Vessel, to detain and prevent any such Ship or Vessel, or to cause such Ship or Vessel to be detained and prevented from proceeding to Sea on her Voyage with such Persons as aforesaid on board: Provided nevertheless, that no Principal Officer, Governor, or Person shall act as aforesaid, upon such Information upon Oath as aforesaid, unless the Party so informing shall not only have deposed in such Information that the Person or Persons on board such Ship or Vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed or been procured to enlist or enter

Oath to be
made as to
facts and
circum-
stances.

or serve, or is or are departing as aforesaid, for the purpose and with the intent of enlisting or entering to serve or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such Information upon Oath, the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such Information upon Oath; and that all and every Person and Persons convicted of wilfully false swearing in any such Information upon Oath, shall be deemed guilty of and suffer the Penalties on Persons convicted of wilful and corrupt Perjury.

6. And be it further enacted, That if any Master or other Person having or taking the Charge or Command of any Ship or Vessel, in any Part of the United Kingdom of Great Britain and Ireland, or in any Part of His Majesty's Dominions beyond the Seas, shall knowingly and willingly take on Board, or if such Master or other Person having the command of any such Ship or Vessel, or any Owner or Owners of any such Ship or Vessel, shall knowingly engage to take on board any Person or Persons who shall have been enlisted or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from His Majesty's Dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any Naval or Military Service, contrary to the provisions of this Act, such Master or Owner or other Person as aforesaid shall forfeit and pay the sum of Fifty Pounds for each and every such Person so taken or engaged to be taken on board; and moreover every such Ship or Vessel, so having on board, conveying, carrying, or transporting any such Person or Persons, shall

Penalty on masters of ships, &c. taking on board persons enlisted contrary to this Act, £50 for each person.

and may be seized and detained by the Collector, Comptroller, Surveyor, or other Officer of the Customs, until such Penalty or Penalties shall be satisfied and paid, or until such Master or Person, or the Owner or Owners of such Ship or Vessel, shall give good and sufficient Bail, by Recognisance before one of His Majesty's Justices of the Peace, for the payment of such Penalty or Penalties.

Penalty on
persons
fitting out
armed
vessels to
aid in mil-
itary
operations
with any
foreign
powers
without
licence ;

7. And be it further enacted, That if any Person, within any part of the United Kingdom, or in any part of His Majesty's Dominions beyond the Seas, shall, without the Leave and Licence of His Majesty for that Purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any Ship or Vessel, with intent or in order that such Ship or Vessel shall be employed in the Service of any Foreign Prince, State, or Potentate, or of any Foreign Colony, Province, or Part of any Province or People, or of any Person or Persons exercising or assuming to exercise any Powers of Government in or over any Foreign State, Colony, Province, or Part of any Province or People, as a Transport or Store Ship, or with intent to cruize or commit hostilities against any Prince, State, or Potentate, or against the Subjects or Citizens of any Prince, State, or Potentate, or against the Persons exercising or assuming to exercise the Powers of Government in any Colony, Province, or Part of any Province or Country, or against the Inhabitants of any Foreign Colony, Province, or Part of any Province or Country with whom His Majesty shall not then be at War ; or shall, within the United Kingdom, or any of His Majesty's Dominions, or in

or issuing
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sions or
ships.

any Settlement, Colony, Territory, Island, or Place belonging or subject to His Majesty, issue or deliver any Commission for any Ship or Vessel, to the intent that such Ship or Vessel shall be employed as aforesaid, every such Person so offending shall be deemed guilty of a Misdemeanor, and shall, upon conviction thereof, upon any Information or Indictment, be punished by Fine and Imprisonment, or either of them, at the discretion of the Court in which such Offender shall be convicted; and every such Ship or Vessel, with the Tackle, Apparel, and Furniture, together with all the Materials, Arms, Ammunition, and Stores, which may belong to or be on board of any such Ship or Vessel, shall be forfeited; and it shall be lawful for any Officer of His Majesty's Customs or Excise, or any Officer of His Majesty's Navy, who is by law empowered to make seizures for any forfeiture incurred under any of the Laws of Customs or Excise, or the Laws of Trade and Navigation, to seize such Ships and Vessels aforesaid, and in such places and in such manner in which the Officers of His Majesty's Customs or Excise and the Officers of His Majesty's Navy are empowered respectively to make seizures under the Laws of Customs and Excise, or under the Laws of Trade and Navigation; and that every such Ship and Vessel, with the Tackle, Apparel, and Furniture, together with all the Materials, Arms, Ammunition, and Stores which may belong to or be on board of such Ship or Vessel, may be prosecuted and condemned in the like manner, and in such Courts as Ships or Vessels may be prosecuted and condemned for any breach of the Laws made for the protection of the Revenues of Customs and Excise, or of the Laws of Trade and Navigation.

8. And be it further enacted, That if any Person in any part of the United Kingdom of Great Britain and Ireland, or Penalty for aiding the war-

like equip- in any part of His Majesty's Dominions beyond the Seas, with-
 ment of out the Leave and Licence of His Majesty for that purpose first
 vessels of
 foreign
 States, &c. had and obtained as aforesaid, shall, by adding to the number
 of the Guns of such Vessel, or by changing those on board for
 other Guns, or by the addition of any Equipment for War, in-
 crease or augment, or procure to be increased or augmented,
 or shall be knowingly concerned in increasing or augmenting
 the Warlike Force of any Ship or Vessel of War, or Cruizer, or
 other Armed Vessel which at the time of her arrival in any
 part of the United Kingdom, or any of His Majesty's Domin-
 ions, was a Ship of War, Cruizer, or Armed Vessel in the service
 of any Foreign Prince, State, or Potentate, or of any Person or
 Persons exercising or assuming to exercise any Powers of
 Government in or over any Colony, Province, or Part of any
 Province or People belonging to the subjects of any such
 Prince, State, or Potentate, or to the inhabitants of any Colony,
 Province, or Part of any Province or Country under the con-
 trol of any Person or Persons so exercising or assuming to
 exercise the Powers of Government, every such Person so
 offending shall be deemed guilty of a Misdemeanor, and shall,
 upon being convicted thereof, upon any Information or Indict-
 ment, be punished by Fine and Imprisonment, or either of
 them, at the discretion of the Court before which such Offender
 shall be convicted.

Offences committed out of the kingdom may be tried at Westminster. 9. And be it further enacted, That offences made punish-
 able by the Provisions of this Act, committed out of the
 United Kingdom, may be prosecuted and tried in His
 Majesty's Court of King's Bench at Westminster, and the
 Venue in such case laid at Westminster in the county of
 Middlesex.

10. And be it further enacted, That any Penalty or Forfeit-

ure inflicted by this Act may be prosecuted, sued for, and recovered, by action of Debt, Bill, Plaint, or Information, in any of His Majesty's Courts of Record at Westminster or Dublin, or in the Court of Exchequer, or in the Court of Session in Scotland, in the name of His Majesty's Attorney-General for England or Ireland, or His Majesty's Advocate for Scotland respectively, or in the name of any Person or Persons whatsoever; wherein no Essoign, Protection, Privilege, Wager of law, nor more than One Imparlance shall be allowed; and in every Action or Suit the Person against whom Judgment shall be given for any Penalty or Forfeiture under this Act shall pay Double Costs of Suit; and every such Action or Suit shall and may be brought at any time within Twelve Months after the Offence committed, and not afterwards; and one Moiety of every Penalty to be recovered by virtue of this Act shall go and be applied to His Majesty, his heirs or successors, and the other Moiety to the use of such Person or Persons as shall first sue for the same, after deducting the Charges of Prosecution from the whole.

How penalties shall be sued for and recovered.

Double costs.

Limitation of actions.

11. And be it further enacted, That if any Action or Suit shall be commenced, either in Great Britain or elsewhere, against any Person or Persons for anything done in pursuance of this Act, all Rules and Regulations, Privileges and Protections, as to maintaining or defending any Suit or Action, and pleading therein, or any Costs thereon, in relation to any Acts, Matters, or Things done, or that may be done by any Officer of Customs or Excise, or by any Officer of His Majesty's Navy, under any Act of Parliament in force on or immediately before the passing of this Act, for the protection of the Revenues of Customs and Excise, or Prevention of Smuggling, shall apply and be in full Force in any such Action or Suit as

Former rules established by law to be applied to actions commenced in pursuance of this Act.

shall be brought for anything done in pursuance of this Act, in as full and ample a manner to all Intents and Purposes as if the same Privileges and Protections were repeated and re-enacted in this Act.

Penalties
not to ex-
tend to
persons
entering
into mili-
tary ser-
vice in
Asia.

12. Provided always and be it further enacted, That nothing in this Act contained shall extend or be construed to extend, to subject to any Penalty any Person who shall enter into the Military Service of any Prince, State, or Potentate in Asia, with Leave or Licence, signified in the usual manner, from the Governor-General in Council, or Vice-President in Council, of Fort William in Bengal, or in conformity with any Orders or Regulations issued or sanctioned by such Governor-General or Vice-President in Council.

No. XII.

FOREIGN ENLISTMENT ACT, 1870.

An Act to regulate the conduct of Her Majesty's Subjects during the existence of hostilities between foreign States with which Her Majesty is at peace.—[9th August 1870.]

Whereas it is expedient to make provision for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between foreign states with which Her Majesty is at peace :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and

Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited for all purposes as "The Foreign Enlistment Act, 1870." Short title of Act.

2. This Act shall extend to all the dominions of Her Majesty, including the adjacent territorial waters. Application of Act.

3. This Act shall come into operation in the United Kingdom immediately on the passing thereof, and shall be proclaimed in every British possession by the governor thereof as soon as may be after he receives notice of this Act, and shall come into operation in that British possession on the day of such proclamation, and the time at which this Act comes into operation in any place is, as respects such place, in this Act referred to as the commencement of this Act. Commencement of Act.

Illegal Enlistment.

4. If any person, without the license of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty, and in this Act referred to as a friendly state, or whether a British subject or not within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid,— Penalty on enlistment in service of foreign state.

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which

the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.

Penalty on leaving Her Majesty's dominions with intent to serve a foreign state.

5. If any person, without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, within her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.

Penalty on embarking persons under false representations as to service.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.

Penalty on taking illegally

7. If the master or owner of any ship, without the license of Her Majesty, knowingly either takes on board or engages

to take on board, or has on board such ship within Her Majesty's dominions any of the following persons in this Act referred to as illegally enlisted persons; that is to say, enlisted persons on board ship.

- (1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state:
- (2.) Any person, being a British subject, who, without the license of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:
- (3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say,—

- (1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour: and
- (2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and

the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

Penalty on leaving Her Majesty's dominions with intent to serve a foreign state.

5. If any person, without the license of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state, or, whether a British subject or not, within her Majesty's dominions, induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

Penalty on embarking persons under false representations as to service.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state,—

He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

Penalty on taking illegally

7. If the master or owner of any ship, without the license of Her Majesty, knowingly either takes on board or engages

to take on board, or has on board such ship within Her Majesty's dominions any of the following persons in this Act referred to as illegally enlisted persons; that is to say, enlisted
persons on
board ship.

- (1.) Any person who, being a British subject within or without the dominions of Her Majesty, has, without the license of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state:
- (2.) Any person, being a British subject, who, without the license of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:
- (3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state:

Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue; that is to say,—

- (1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour: and
- (2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and

until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace: and

- (3.) All illegally enlisted persons shall immediately on the discovery of the offence be taken on shore, and shall not be allowed to return to the ship.

Illegal Shipbuilding and Illegal Expeditions.

Penalty on 8. If any person within her Majesty's dominions, without
illegal
shipbuild- the license of her Majesty, does any of the following acts;
ing and
illegal ex- that is to say,—
peditions.

- (1.) Builds or agrees to build, or causes to be built any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or
- (2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or
- (3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state: or
- (4.) Despatches, or causes or allows to be despatched, any ship with intent or knowledge, or having reasonable

cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state :

Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue :

- (1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.
- (2.) The ship in respect of which any such offence is committed, and her equipment, shall be forfeited to Her Majesty :

Provided that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following ; (that is to say,)

- (1.) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the Secretary of State :
- (2.) If he gives such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe for ensuring that such ship shall not be despatched, delivered, or removed with-

out the license of Her Majesty until the termination of such war as aforesaid.

Presump-
tion as to
evidence
in case of
illegal
ship.

9. Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state, or is delivered to or to the order of such foreign state, or any person who to the knowledge of the person building is an agent of such foreign state, or is paid for by such foreign state or such agent, and is employed in the military or naval service of such foreign state, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state.

Penalty on
aiding the
warlike
equipment
of foreign
ships.

10. If any person within the dominions of Her Majesty, and without the license of Her Majesty,—

By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state,—

Such person shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

Penalty on
fitting out
naval or

11. If any person within the limits of Her Majesty's dominions, and without the license of Her Majesty,—

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, the following consequences shall ensue: military expeditions without license.

(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

(2.) All ships, and their equipments, and all arms and munitions of war, used in or forming part of such expedition, shall be forfeited to Her Majesty.

12. Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender. Punishment of accessories.

13. The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years. Limitation of term of imprisonment.

Illegal Prize.

14. If, during the continuance of any war in which Her Majesty may be neutral, any ship, goods, or merchandise captured as prize of war within the territorial jurisdiction of Her Majesty, in violation of the neutrality of this realm, or captured by any ship which may have been built, equipped, commissioned, or despatched, or the force of which may have been augmented, contrary to the provisions of this Act, are brought within the limits of Her Majesty's dominions by the Illegal prize brought into British ports restored.

captor, or any agent of the captor, or by any person having come into possession thereof with knowledge that the same was prize of war so captured as aforesaid, it shall be lawful for the original owner of such prize, or his agent, or for any person authorised in that behalf by the Government of the foreign state to which such owner belongs, to make application to the Court of Admiralty for seizure and detention of such prize, and the Court shall, on due proof of the facts, order such prize to be restored.

Every such order shall be executed and carried into effect in the same manner and subject to the same right of appeal as in case of any order made in the exercise of the ordinary jurisdiction of such Court; and in the meantime, and until a final order has been made on such application, the Court shall have power to make all such provisional and other orders as to the care or custody of such captured ship, goods, or merchandise, and (if the same be of perishable nature, or incurring risk of deterioration) for the sale thereof, and with respect to the deposit or investment of the proceeds of any such sale, as may be made by such Court in the exercise of its ordinary jurisdiction.

General Provision.

License by
Her Majesty
how
granted. 15. For the purposes of this Act, a license by Her Majesty shall be under the sign manual of Her Majesty, or be signified by Order in Council or by proclamation of Her Majesty.

Legal Procedure.

Jurisdiction in
respect of 16. Any offence against this Act shall, for all purposes of and incidental to the trial and punishment of any person

guilty of any such offence, be deemed to have been committed either in the place in which the offence was wholly or partly committed, or in any place within Her Majesty's dominions in which the person who committed such offence may be.

offences by
persons
against
Act.

17. Any offence against this Act may be described in any indictment or other document relating to such offence, in cases where the mode of trial requires such a description, as having been committed at the place where it was wholly or partly committed, or it may be averred generally to have been committed within Her Majesty's dominions, and the venue or local description in the margin may be that of the county, city, or place in which the trial is held.

Venue in
respect of
offences by
persons.
24 & 25
Vict. c. 97.

18. The following authorities, that is to say, in the United Kingdom any judge of a superior Court, in any other place within the jurisdiction of any British Court of justice, such Court, or, if there are more Courts than one, the Court having the highest criminal jurisdiction in that place, may, by warrant or instrument in the nature of a warrant in this section included in the term "warrant," direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice, and any prisoner so removed shall be triable at the place to which he is removed, in the same manner as if his offence had been committed at such place.

Power to
remove
offenders
for trial.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons, and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named to any place or places named in such warrant, and to

deliver him, when arrived at such place or places, into the custody of any authority designated by such warrant.

Every prisoner shall, during the time of his removal under any such warrant as aforesaid, be deemed to be in the legal custody of the person or persons empowered to remove him.

Jurisdiction in respect of forfeiture of ships for offences against Act.

19. All proceedings for the condemnation and forfeiture of a ship, or ship and equipment, or arms and munitions of war, in pursuance of this Act shall require the sanction of the Secretary of State or such chief executive authority as is in this Act mentioned, and shall be had in the Court of Admiralty, and not in any other Court; and the Court of Admiralty shall, in addition to any power given to the Court by this Act, have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

Regulations as to proceedings against the offender and against the ship.

20. Where any offence against this Act has been committed by any person by reason whereof a ship, or ship and equipment, or arms and munitions of war, has or have become liable to forfeiture, proceedings may be instituted contemporaneously or not, as may be thought fit, against the offender in any Court having jurisdiction of the offence, and against the ship, or ship and equipment, or arms and munitions of war, for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture, or to take proceedings for the forfeiture because proceedings are taken against the offender.

Officers authorised to seize

21. The following officers, that is to say,

(1.) Any officer of customs in the United Kingdom, subject

nevertheless to any special or general instructions from the Commissioners of Customs or any officer of the Board of Trade, subject nevertheless to any special or general instructions from the Board of Trade ;

- (2.) Any officer of customs or public officer in any British possession, subject nevertheless to any special or general instructions from the governor of such possession ;
- (3.) Any commissioned officer on full pay in the military service of the Crown, subject nevertheless to any special or general instructions from his commanding officer ;
- (4.) Any commissioned officer on full pay in the naval service of the Crown, subject nevertheless to any special or general instructions from the Admiralty or his superior officer,

may seize or detain any ship liable to be seized or detained in pursuance of this Act, and such officers are in this Act referred to as the "local authority;" but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such Court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

22. Any officer authorised to seize or detain any ship in respect of any offence against this Act may, for the purpose of enforcing such seizure or detention, call to his aid any constable or officers of police, or any officers of Her Majesty's army or navy or marines, or any excise officers or officers of customs, or any harbour-master or dock-master, or any officers having authority by law to make seizures of ships, and may

offending
ships.

Powers of
officers
authorised
to seize
ships.

put on board any ship so seized or detained any one or more of such officers to take charge of the same, and to enforce the provisions of this Act, and any officer seizing or detaining any ship under this Act may use force, if necessary, for the purpose of enforcing seizure or detention, and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties, or any person acting under his orders, such officer so seizing or detaining the ship, or other person, shall be freely and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

Special
power of
Secretary
of State
or chief
executive
authority
to detain
ship.

23. If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant the local authority shall have power to seize and search such ship, and to detain the same until it has been either condemned or released by process of law, or in manner herein-after mentioned.

The owner of the ship so detained, or his agent, may apply to the Court of Admiralty for its release, and the Court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the Court that the ship was not and is not being built, commissioned, or

equipped, or intended to be despatched contrary to this Act, the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the Court that the ship was not and is not being built, commissioned, or equipped, or intended to be despatched contrary to this Act, then the ship shall be detained till released by order of the Secretary of State or chief executive authority.

The Court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the Court that the ship shall not be employed contrary to this Act, notwithstanding that the applicant may have failed to establish to the satisfaction of the Court that the ship was not and is not being built, commissioned, or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act, or may release the ship without such security if the Secretary of State or chief executive authority think fit so to release the same.

If the Court be of opinion that there was not reasonable and probable cause for the detention, and if no such cause appear in the course of the proceedings, the Court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention, the amount thereof to be assessed by the Court, and any amount so assessed shall be payable by the Commissioners of the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a

like order for the indemnity of the owner, on the application of such owner to the Court, in a summary way, in cases where the ship is released by the order of the Secretary of State or the chief executive authority, before any application is made by the owner or his agent to the Court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture, subject to this provision, that if such ship is restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the Court declares that the owner is to be indemnified by the payment of costs and damages for the detainer, all costs, charges, and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non - commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage, and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

Special
power of
local au-
thority to
detain
ship.

24. Where it is represented to any local authority, as defined by this Act, and such local authority believes the representation, that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to this Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to this Act, it shall be the duty of such local authority to detain such ship, and forthwith to communicate the fact of

such detention to the Secretary of State or chief executive authority.

Upon the receipt of such communication the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her, but if satisfied that there is reasonable and probable cause for believing that such ship was built, commissioned, or equipped or intended to be despatched in contravention of this Act, he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid, and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant, the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention upon application to the Court of Admiralty in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the Court for such release.

25. The Secretary of State or the chief executive authority may, by warrant, empower any person to enter any dockyard or other place within Her Majesty's dominions and inquire as to the destination of any ship which may appear to him to be intended to be employed in the naval or military service of any foreign state at war with a friendly state, and to search such ship.

Power of
Secretary
of State or
executive
authority
to grant
search
warrant.

26. Any powers or jurisdiction by this Act given to the

Exercise of
powers of
Secretary
of State
or chief
executive
authority.

Secretary of State may be exercised by him throughout the dominions of Her Majesty, and such powers and jurisdiction may also be exercised by any of the following officers, in this Act referred to as the chief executive authority, within their respective jurisdictions ; that is to say,

- (1.) In Ireland by the Lord Lieutenant or other the chief governor or governors of Ireland for the time being, or the chief secretary to the Lord Lieutenant :
- (2.) In Jersey by the Lieutenant Governor :
- (3.) In Guernsey, Alderney, and Sark, and the dependent islands by the Lieutenant Governor :
- (4.) In the Isle of Man by the Lieutenant Governor :
- (5.) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State or by any officer authorised in pursuance of this Act to issue such warrant in Ireland, the Channel Islands, or the Isle of Man shall be laid before Parliament.

Appeal
from Court
of Admir-
alty.

27. An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the Court as a Court of Admiralty.

Indemnity
to officers.

28. Subject to the provisions of this Act providing for the award of damages in certain cases in respect of the seizure or detention of a ship by the Court of Admiralty no damages shall be payable, and no officer or local authority shall be responsible, either civilly or criminally, in respect of the seizure or detention of any ship in pursuance of this Act.

Indemnity
to Secre-
tary of
State or
chief exe-
cutive au-
thority.

29. The Secretary of State shall not, nor shall the chief executive authority, be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act, or be examinable as a witness, except

at his own request, in any Court of justice in respect of the circumstances which led to the issue of the warrant.

Interpretation Clause.

30. In this Act, if not inconsistent with the context, the following terms have the meanings herein-after respectively assigned to them; that is to say, Interpretation of terms.

“Foreign state” includes any foreign prince, colony, province, or part of any province or people, or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people: “Foreign state:”

“Military service” shall include military telegraphy and any other employment whatever, in or in connexion with any military operation: “Military service:”

“Naval service” shall, as respects a person, include service as a marine, employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation, and any employment whatever on board a ship of war, transport, store ship, privateer or ship under letters of marque; and as respects a ship, include any user of a ship as a transport, store ship, privateer or ship under letters of marque: “Naval service:”

“United Kingdom” includes the Isle of Man, the Channel Islands, and other adjacent islands: “United Kingdom:”

“British possession” means any territory, colony, or place being part of Her Majesty’s dominions, and not part of the United Kingdom, as defined by this Act: “British possession:”

“The Secretary of State” shall mean any one of Her Majesty’s Principal Secretaries of State: “The Secretary of State:”

- “Governor :” “The Governor” shall as respects India mean the Governor General or the governor of any presidency, and where a British possession consists of several constituent colonies, mean the Governor General of the whole possession or the Governor of any of the constituent colonies, and as respects any other British possession it shall mean the officer for the time being administering the government of such possession ; also any person acting for or in the capacity of a governor shall be included under the term “Governor” :
- “Court of Admiralty :” “Court of Admiralty” shall mean the High Court of Admiralty of England or Ireland, the Court of Session of Scotland, or any Vice-Admiralty Court within Her Majesty’s dominions :
- “Ship :” “Ship” shall include any description of boat, vessel, floating battery, or floating craft ; also any description of boat, vessel, or other craft or battery, made to move either on the surface of or under water, or sometimes on the surface of and sometimes under water :
- “Building :” “Building” in relation to a ship shall include the doing any act towards or incidental to the construction of a ship, and all words having relation to building shall be construed accordingly :
- “Equipping :” “Equipping” in relation to a ship shall include the furnishing a ship with any tackle, apparel, furniture, provisions, arms, munitions, or stores, or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service, and all words relating to equipping shall be construed accordingly :
- “Ship and equipment :” “Ship and equipment” shall include a ship and everything in or belonging to a ship.

"Master" shall include any person having the charge or "Master." command of a ship.

Repeal of Acts and Saving Clauses.

31. From and after the commencement of this Act, an Act passed in the fifty-ninth year of the reign of His late Majesty King George the Third, chapter sixty-nine, intituled "An Act to prevent the enlisting or engagement of His Majesty's subjects to serve in foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's license," shall be repealed: Provided that such repeal shall not affect any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation, nor the institution of any investigation or legal proceeding, or any other remedy for enforcing any such penalty, forfeiture, or punishment as aforesaid.

Repeal of
Foreign
Enlist-
ment Act.
59 G. 3. c.
69.

32. Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign state, or give to any British Court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign state any jurisdiction which it would not have had if this Act had not passed.

Saving as
to commis-
sioned
foreign
ships.

33. Nothing in this Act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any prince, state, or potentate in Asia, with such leave or license as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes, states, or potentates in Asia.¹

Penalties
not to ex-
tend to
persons
entering
into mili-
tary ser-
vice in
Asia.
59 G. 3. c.
69, s. 12.

¹ "Instructions for the guidance of the Commanders-in-Chief, or the senior officers present, as to the course to be pursued in carrying into effect, and in assisting the civil authorities to carry into effect, the provisions of the Foreign Enlistment Act, 1870," will be found in the Queen's Regulations and Admiralty Instructions, 1879, p. 141.

No. XIII.

NATURALIZATION ACT, 1870.

An Act to amend the law relating to the legal condition of Aliens and British Subjects.—[12th May 1870.]

Whereas it is expedient to amend the law relating to the legal condition of aliens and British subjects :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. 1. This Act may be cited for all purposes as " The Naturalization Act, 1870."

Status of Aliens in the United Kingdom.

Capacity of an alien as to property. 2. Real and personal property of every description may be taken, acquired, held, and disposed of by an alien in the same manner in all respects as by a natural-born British subject ; and a title to real and personal property of every description may be derived through, from, or in succession to an alien, in the same manner in all respects as through, from, or in succession to a natural-born British subject : Provided,—

(1.) That this section shall not confer any right on an alien to hold real property situate out of the United Kingdom, and shall not qualify an alien for any office or for any municipal, parliamentary, or other franchise :

- (2.) That this section shall not entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him :
- (3.) That this section shall not affect any estate or interest in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the passing of this Act, or in pursuance of any devolution by law on the death of any person dying before the passing of this Act.

3. Where Her Majesty has entered into a convention with any foreign state to the effect that the subjects or citizens of that state who have been naturalized as British subjects may divest themselves of their status as such subjects, it shall be lawful for Her Majesty, by Order in Council, to declare that such convention has been entered into by Her Majesty ; and from and after the date of such Order in Council, any person being originally a subject or a citizen of the state referred to in such Order, who has been naturalized as a British subject, may, within such limit of time as may be provided in the convention, make a declaration of alienage, and from and after the date of his so making such declaration such person shall be regarded as an alien, and as a subject of the state to which he originally belonged as aforesaid.

Power of
natural-
ized aliens
to divest
themselves
of their
status in
certain
cases.

A declaration of alienage may be made as follows ; that is to say,—If the declarant be in the United Kingdom in the presence of any justice of the peace, if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or

of any other officer for the time being authorised by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

How
British-
born sub-
ject may
cease to be
such.

4. Any person who by reason of his having been born within the dominions of Her Majesty is a natural-born subject, but who also at the time of his birth became under the law of any foreign state a subject of such state, and is still such subject, may, if of full age and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration of alienage such person shall cease to be a British subject. Any person who is born out of Her Majesty's dominions of a father being a British subject may, if of full age, and not under any disability, make a declaration of alienage in manner aforesaid, and from and after the making of such declaration shall cease to be a British subject.

Alien not
entitled to
jury de
medietate
linguæ.

5. From and after the passing of this Act, an alien shall not be entitled to be tried by a jury de medietate linguæ, but shall be triable in the same manner as if he were a natural-born subject.

Expatriation.

Capacity
of British
subject to
renounce
allegiance
to Her
Majesty.

6. Any British subject who has at any time before, or may at any time after the passing of this Act, when in any foreign state and not under any disability voluntarily become naturalized in such state, shall, from and after the time of his so having become naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien :
Provided,—

- (1.) That where any British subject has before the passing of this Act voluntarily become naturalized in a foreign state and yet is desirous of remaining a British subject, he may, at any time within two years after the passing of this Act, make a declaration that he is desirous of remaining a British subject, and upon such declaration herein-after referred to as a declaration of British nationality being made, and upon his taking the oath of allegiance, the declarant shall be deemed to be and to have been continually a British subject ; with this qualification, that he shall not, when within the limits of the foreign state in which he has been naturalized, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect :
- (2.) A declaration of British nationality may be made, and the oath of allegiance be taken as follows ; that is to say,—if the declarant be in the United Kingdom in the presence of a justice of the peace ; if elsewhere in Her Majesty's dominions in the presence of any judge of any court of civil or criminal jurisdiction, of any justice of the peace, or of any other officer for the time being authorized by law in the place in which the declarant is to administer an oath for any judicial or other legal purpose. If out of Her Majesty's dominions in the presence of any officer in the diplomatic or consular service of Her Majesty.

Naturalization and resumption of British Nationality.

7. An alien who within such limited time before making

Certificate
of natural-
isation.

the application herein-after mentioned as may be allowed by one of Her Majesty's Principal Secretaries of State, either by general order or on any special occasion, has resided in the United Kingdom for a term of not less than five years, or has been in the service of the Crown for a term of not less than five years, and intends, when naturalized, either to reside in the United Kingdom, or to serve under the Crown, may apply to one of Her Majesty's Principal Secretaries of State for a certificate of naturalization.

The applicant shall adduce in support of his application such evidence of his residence or service, and intention to reside or serve, as such Secretary of State may require. The said Secretary of State, if satisfied with the evidence adduced, shall take the case of the applicant into consideration, and may, with or without assigning any reason, give or withhold a certificate as he thinks most conducive to the public good, and no appeal shall lie from his decision, but such certificate shall not take effect until the applicant has taken the oath of allegiance.

An alien to whom a certificate of naturalization is granted shall in the United Kingdom be entitled to all political and other rights, powers, and privileges, and be subject to all obligations, to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification, that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalization, be deemed to be a British subject unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect.

The said Secretary of State may in manner aforesaid grant a special certificate of naturalization to any person with respect

to whose nationality as a British subject a doubt exists, and he may specify in such certificate that the grant thereof is made for the purpose of quieting doubts as to the right of such person to be a British subject, and the grant of such special certificate shall not be deemed to be any admission that the person to whom it was granted was not previously a British subject.

An alien who has been naturalized previously to the passing of this Act may apply to the Secretary of State for a certificate of naturalization under this Act, and it shall be lawful for the said Secretary of State to grant such certificate to such naturalized alien upon the same terms and subject to the same conditions in and upon which such certificate might have been granted if such alien had not been previously naturalized in the United Kingdom.

8. A natural-born British subject who has become an alien in pursuance of this Act, and is in this Act referred to as a statutory alien, may, on performing the same conditions and adducing the same evidence as is required in the case of an alien applying for a certificate of nationality, apply to one of Her Majesty's Principal Secretaries of State for a certificate, herein-after referred to as a certificate of re-admission to British nationality, re-admitting him to the status of a British subject. The said Secretary of State shall have the same discretion as to the giving or withholding of the certificate as in the case of a certificate of naturalization, and an oath of allegiance shall in like manner be required previously to the issuing of the certificate.

Certificate
of re-ad-
mission to
British
national-
ity.

A statutory alien to whom a certificate of re-admission to British nationality has been granted shall, from the date of the certificate of re-admission, but not in respect of any previ-

ous transaction, resume his position as a British subject ; with this qualification, that within the limits of the foreign state of which he became a subject he shall not be deemed to be a British subject unless he has ceased to be a subject of that foreign state according to the laws thereof, or in pursuance of a treaty to that effect.

The jurisdiction by this Act conferred on the Secretary of State in the United Kingdom in respect of the grant of a certificate of re-admission to British nationality, in the case of any statutory alien being in any British possession, may be exercised by the governor of such possession ; and residence in such possession shall, in the case of such person, be deemed equivalent to residence in the United Kingdom.

Form of
oath of
allegiance.

9. The oath in this Act referred to as the oath of allegiance shall be in the form following ; that is to say,

“ I do swear that I will be faithful
“ and bear true allegiance to Her Majesty Queen Victoria, her
“ heirs and successors, according to law. So help me GOD.”

National status of married women and infant children.

National
status of
married
women
and infant
children.

10. The following enactments shall be made with respect to the national status of women and children :

- (1.) A married woman shall be deemed to be a subject of the state of which her husband is for the time being a subject :
- (2.) A widow being a natural-born British subject, who has become an alien by or in consequence of her marriage, shall be deemed to be a statutory alien, and may as such at any time during widowhood obtain a certificate of re-admission to British nationality in manner provided by this Act :

- (3.) Where the father being a British subject, or the mother being a British subject and a widow, becomes an alien in pursuance of this Act, every child of such father or mother who during infancy has become resident in the country where the father or mother is naturalized, and has, according to the laws of such country, become naturalized therein, shall be deemed to be a subject of the state of which the father or mother has become a subject, and not a British subject :
- (4.) Where the father, or the mother being a widow, has obtained a certificate of re-admission to British nationality, every child of such father or mother who during infancy has become resident in the British dominions with such father or mother, shall be deemed to have resumed the position of a British subject to all intents :
- (5.) Where the father, or the mother being a widow, has obtained a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, shall be deemed to be a naturalized British subject.

Supplemental Provisions.

11. One of Her Majesty's Principal Secretaries of State may by regulation provide for the following matters:—
- (1.) The form and registration of declarations of British nationality :
 - (2.) The form and registration of certificates of naturalization in the United Kingdom :

Regulations as to registration.

- (3.) The form and registration of certificates of re-admission to British nationality :
- (4.) The form and registration of declarations of alienage :
- (5.) The registration by officers in the diplomatic or consular service of Her Majesty of the births and deaths of British subjects who may be born or die out of Her Majesty's dominions, and of the marriages of persons married at any of Her Majesty's embassies or legations :
- (6.) The transmission to the United Kingdom for the purpose of registration or safe keeping, or of being produced as evidence, of any declarations or certificates made in pursuance of this Act out of the United Kingdom, or of any copies of such declarations or certificates, also of copies of entries contained in any register kept out of the United Kingdom in pursuance of or for the purpose of carrying into effect the provisions of this Act.
- (7.) With the consent of the Treasury the imposition and application of fees in respect of any registration authorized to be made by this Act, and in respect of the making any declaration or the grant of any certificate authorized to be made or granted by this Act.

The said Secretary of State, by a further regulation, may repeal, alter, or add to any regulation previously made by him in pursuance of this section.

Any regulation made by the said Secretary of State in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if it had been enacted in this Act, but shall not so far as respects the imposition of fees be in force in any British possession,

and shall not, so far as respects any other matter, be in force in any British possession in which any Act or ordinance to the contrary of or inconsistent with any such direction may for the time being be in force.

12. The following regulations shall be made with respect to evidence under this Act:—

Regulations as to evidence.

- (1.) Any declaration authorized to be made under this Act may be proved in any legal proceeding by the production of the original declaration, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such declaration, and the production of such declaration or copy shall be evidence of the person therein named as declarant having made the same at the date in the said declaration mentioned:
- (2.) A certificate of naturalization may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate:
- (3.) A certificate of re-admission to British nationality may be proved in any legal proceeding by the production of the original certificate, or of any copy thereof certified to be a true copy by one of Her Majesty's Principal Secretaries of State, or by any person authorized by regulations of one of Her Majesty's Principal Secretaries of State to give certified copies of such certificate.

- (4.) Entries in any register authorized to be made in pursuance of this Act shall be proved by such copies and certified in such manner as may be directed by one of Her Majesty's Principal Secretaries of State, and the copies of such entries shall be evidence of any matters by this Act or by any regulation of the said Secretary of State authorized to be inserted in the register :
- (5.) The Documentary Evidence Act, 1868, shall apply to any regulation made by a Secretary of State, in pursuance of or for the purpose of carrying into effect any of the provisions of this Act.

Miscellaneous.

- | | |
|--|---|
| Saving of letters of denization. | 13. Nothing in this Act contained shall affect the grant of letters of denization by Her Majesty. |
| Saving as to British ships. | 14. Nothing in this Act contained shall qualify an alien to be the owner of a British ship. |
| Saving of allegiance prior to expatriation | 15. Where any British subject has in pursuance of this Act become an alien, he shall not thereby be discharged from any liability in respect of any acts done before the date of his so becoming an alien. |
| Power of colonies to legislate with respect to naturalisation. | 16. All laws, statutes, and ordinances which may be duly made by the legislature of any British possession for imparting to any person the privileges, or any of the privileges, of naturalization, to be enjoyed by such person within the limits of such possession, shall within such limits have the authority of law, but shall be subject to be confirmed or disallowed by Her Majesty in the same manner, and subject to the same rules in and subject to which Her Majesty has power to confirm or disallow any other laws, statutes, or ordinances in that possession. |

17. In this Act, if not inconsistent with the context or Definition of terms.
subject-matter thereof,—

“Disability” shall mean the status of being an infant, lunatic, idiot, or married woman :

“British possession” shall mean any colony, plantation, island, territory, or settlement within Her Majesty’s dominions, and not within the United Kingdom, and all territories and places under one legislature are deemed to be one British possession for the purposes of this Act :

“The Governor of any British possession” shall include any person exercising the chief authority in such possession :

“Officer in the Diplomatic Service of Her Majesty” shall mean any Ambassador, Minister or Chargé d’Affaires, or Secretary of Legation, or any person appointed by such Ambassador, Minister, Chargé d’Affaires, or Secretary of Legation to execute any duties imposed by this Act on an officer in the Diplomatic Service of Her Majesty :

“Officer in the Consular Service of Her Majesty” shall mean and include Consul-General, Consul, Vice-Consul, and Consular Agent, and any person for the time being discharging the duties of Consul-General, Consul, Vice-Consul, and Consular Agent.

Repeal of Acts mentioned in Schedule.

18. The several Acts set forth in the first and second parts Repeal of Acts.
of the schedule annexed hereto shall be wholly repealed, and the Acts set forth in the third part of the said schedule shall be repealed to the extent therein mentioned ; provided that the repeal enacted in this Act shall not affect—

- (1.) Any right acquired or thing done before the passing of this Act :
- (2.) Any liability accruing before the passing of this Act :
- (3.) Any penalty, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed before the passing of this Act :
- (4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining or enforcing any such liability, penalty, forfeiture, or punishment as aforesaid.

SCHEDULE.

NOTE.—Reference is made to the repeal of the “whole Act” where portions have been repealed before, in order to preclude henceforth the necessity of looking back to previous Acts.

This Schedule, so far as respects Acts prior to the reign of George the Second, other than Acts of the Irish Parliament, refers to the edition prepared under the direction of the Record Commission, intituled “The Statutes of the Realm; printed by Command of His Majesty King George the Third, in pursuance of an Address of the House of Commons of Great Britain. From original Records and authentic “Manuscripts.”

PART I.

ACTS WHOLLY REPEALED, OTHER THAN ACTS OF THE IRISH PARLIAMENT.

Date.	Title.
7 Jas. 1. c. 2. . .	An Act that all such as are to be naturalized or restored in blood shall first receive the sacrament of the Lord's Supper, and the oath of allegiance, and the oath of supremacy.
11 Will. 3. c. 6. ¹ . .	An Act to enable His Majesty's natural-born subjects to inherit the estate of their ancestors, either lineal or collateral, notwithstanding their father or mother were aliens.

¹ 11 & 12 Wm. 3. (Ruff.)

Date.	Title.
13 Geo. 2. c. 7. .	An Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America.
20 Geo. 2. c. 44. .	An Act to extend the provisions of an Act made in the thirteenth year of His present Majesty's reign, intituled "An Act for naturalizing foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's colonies in America, to other foreign Protestants who conscientiously scruple the taking of an oath."
13 Geo. 3. c. 25. .	An Act to explain two Acts of Parliament, one of the thirteenth year of the reign of His late Majesty, "for naturalizing such foreign Protestants and others, as are settled or shall settle in any of His Majesty's colonies in America," and the other of the second year of the reign of His present Majesty, "for naturalizing such foreign Protestants as have served or shall serve as officers or soldiers in His Majesty's Royal American regiment, or as engineers in America."
14 Geo. 3. c. 84. .	An Act to prevent certain inconveniences that may happen by bills of naturalization.
16 Geo. 3. c. 52. .	An Act to declare His Majesty's natural-born subjects inheritable to the estates of their ancestors, whether lineal or collateral, in that part of Great Britain called Scotland, notwithstanding their father or mother were aliens.
6 Geo. 4. c. 67. .	An Act to alter and amend an Act passed in the seventh year of the reign of His Majesty King James the First, intituled "An Act that all such as are to be naturalized or restored in blood shall receive the sacrament of the Lord's Supper and the oath of allegiance and the oath of supremacy."
7 & 8 Vict. c. 66. .	An Act to amend the laws relating to aliens.
10 & 11 Vict. c. 83. .	An Act for the naturalization of aliens.

PART II.

ACTS OF THE IRISH PARLIAMENT WHOLLY REPEALED.

Date.	Title.
14 & 15 Chas. 2. c. 13.	An Act for encouraging Protestant strangers and other to inhabit and plant in the kingdom of Ireland.

Date.	Title.
2 Anne, c. 14. . .	An Act for naturalizing of all Protestant strangers in this kingdom.
19 & 20 Geo. 3. c. 29.	An Act for naturalizing such foreign merchants, traders, artificers, artizans, manufacturers, workmen, seamen, farmers, and others as shall settle in this kingdom.
23 & 24 Geo. 3. c. 38.	An Act for extending the provisions of an Act passed in this kingdom in the nineteenth and twentieth years of His Majesty's reign, intituled "An Act " for naturalizing such foreign merchants, traders, " artificers, artizans, manufacturers, workmen, " seamen, farmers, and others as shall settle in " this kingdom."
36 Geo. 3. c. 48. . .	An Act to explain and amend an Act, intituled "An " Act for naturalizing such foreign merchants, " traders, artificers, artizans, manufacturers, work- " men, seamen, farmers, and others who shall " settle in this kingdom."

PART III.

ACTS PARTIALLY REPEALED.

	Extent of Repeal.
4 Geo. 1. c. 9. . . (Act of Irish Par- liament.)	An Act for reviving, con- tinuing, and amending several statutes made in this kingdom heretofore temporary. So far as it makes per- petual the Act of 2 Anne, c. 14.
6 Geo. 4. c. 50. . .	An Act for consolidating and amending the laws relative to Jurors and Juries. The whole of sect. 47.
3 & 4 Will. 4. c. 91.	An Act consolidating and amending the laws relat- ing to Jurors and Juries in Ireland. The whole of sect. 37.

No. XIV.

OATHS OF ALLEGIANCE ON NATURALIZATION.

An Act to amend the Law relating to the taking of Oaths of Allegiance on Naturalization.—[10th August 1870.]

Whereas it is expedient to amend the law relating to the taking of oaths of allegiance under the Naturalization Act, 33 & 34 Vict. c. 14. 1870 :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The power of making regulations vested in one of Her Majesty's Principal Secretaries of State by the Naturalization Act, 1870, shall extend to prescribing as follows : Regulations as to oaths of allegiance.

- (1.) The persons by whom the oaths of allegiance may be administered under that Act :
- (2.) Whether or not such oaths are to be subscribed as well as taken, and the form in which such taking and subscription are to be attested :
- (3.) The registration of such oaths :
- (4.) The persons by whom certified copies of such oaths may be given :
- (5.) The transmission to the United Kingdom for the purpose of registration or safe keeping or of being produced as evidence of any oaths taken in pursuance of the said Act out of the United Kingdom, or of any copies of such oaths, also of copies of entries of

such oaths contained in any register kept out of the United Kingdom in pursuance of this Act :

(6.) The proof in any legal proceeding of such oaths :

(7.) With the consent of the Treasury, the imposition and application of fees in respect of the administration or registration of any such oath.

The two last paragraphs in the eleventh section of the Naturalization Act, 1870, shall apply to regulations made under this Act.

Penalty on making false declaration. 2. Any person wilfully and corruptly making or subscribing any declaration under the Naturalization Act, 1870, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor, and be liable to imprisonment with or without hard labour for any term not exceeding twelve months.

Construction and short title of Act. 3. This Act shall be termed the Naturalization Oath Act, 1870, and shall be construed as one with the Naturalization Act, 1870, and may be cited together with that Act as the Naturalization Acts, 1870.

No. XV.

DOCUMENTS PREPARED BY THE INSTITUTE OF INTERNATIONAL LAW, WITH A VIEW TO THE NEGOTIATION OF INTERNATIONAL TREATIES.

DROIT INTERNATIONAL PRIVÉ.—CONFLIT DES LOIS.

Conclusions générales (adoptées à Genève).

I. L'Institut reconnaît l'évidente utilité et même, pour certaines matières, la nécessité de Traités par lesquels les États

civilisés adoptent d'un commun accord des règles obligatoires et uniformes de droit international privé, d'après lesquelles les autorités publiques, et spécialement les tribunaux des États contractants, devraient décider les questions concernant les personnes, les biens, les actes, les successions, les procédures et les jugements étrangers.

II. L'Institut est d'avis que le meilleur moyen d'atteindre ce but serait que l'Institut lui-même préparât des projets textuels de ces traités, soit généraux, soit concernant des matières spéciales, et particulièrement les conflits par rapport aux mariages, aux successions, ainsi qu'à l'exécution des jugements étrangers. Ces projets de traités pourraient servir de base aux négociations officielles et à la rédaction définitive, qui seraient confiées à une conférence de jurisconsultes et d'hommes spéciaux délégués par les différents États ou du moins par quelques-uns d'entre eux, en accordant dans ce dernier cas aux autres États, pour ce qui concerne les matières à l'égard desquelles ce système peut être adopté sans inconvénient, la faculté d'y accéder successivement.

III. Ces traités ne devraient pas imposer aux États contractants l'uniformité complète de leurs codes et de leurs lois ; ils ne le pourraient même pas sans mettre obstacle aux progrès de la civilisation. Mais, sans toucher à l'indépendance législative, ces traités devraient déterminer d'avance laquelle d'entre les législations, qui pourraient se trouver en conflit, sera applicable aux différents rapports de droit. On soustrairait ainsi cette détermination aux contradictions entre législations parfois inconciliables des divers peuples, à l'influence dangereuse des intérêts et des préjugés nationaux, et aux incertitudes de la jurisprudence et de la science elle-même.

IV. Dans l'état actuel de la science du droit international,

ce serait pousser jusqu'à l'exagération le principe de l'indépendance et de la souveraineté territoriale des nations, que de leur attribuer un droit rigoureux de refuser absolument aux étrangers la reconnaissance de leurs droits civils, et de méconnaître leur capacité juridique naturelle de les exercer partout. Cette capacité existe indépendamment de toute stipulation des traités et de toute condition de réciprocité. L'admission des étrangers à la jouissance de ces droits, et l'application des lois étrangères aux rapports de droit qui en dépendent, ne pourraient être la conséquence d'une simple courtoisie et bien séance (*comitas gentium*) mais la reconnaissance et le respect de ces droits de la part de tous les États doivent être considérés comme un devoir de justice internationale. Ce devoir ne cesse d'exister, que si les droits de l'étranger et l'application des lois étrangères sont incompatibles avec les institutions politiques du territoire régi par l'autre souveraineté, ou avec l'ordre public tel qu'il y est reconnu.

*Conclusions spéciales relatives à la procédure civile (adoptées
à Genève).*

Il serait utile d'établir, par des *traités internationaux*, des règles uniformes concernant :

1° La base et les limites de la juridiction et de la compétence des tribunaux ;

2° Les formes de la procédure afin ;

(a) De décider quelle est la loi qui régit ces formes dans les cas douteux.

(b) De bien préciser les principes du droit international à l'égard des moyens de preuve ;

(c) De régler la forme des assignations et autres exploits à signifier aux personnes domiciliées ou résidant à l'étranger ;

(d) De régler les *commissions rogatoires*.

3° L'exécution des jugements étrangers, en vertu de traités, dans lesquels on stipulera les garanties et les conditions sous lesquelles le *pareatis* sera accordé.

*Conclusions plus spéciales relatives à la compétence des tribunaux
(adoptées à La Haye).*

Les règles uniformes concernant la compétence des tribunaux, règles dont l'utilité a été reconnue par l'Institut dans la session de Genève, devraient avoir pour base les principes suivants :

(a) Le *domicile* (et subsidiairement la *résidence*) du *défendeur*, dans les actions personnelles ou qui concernent des biens meubles, et la *situation des biens*, dans les actions réelles concernant des immeubles, doivent, dans le règle, déterminer la compétence du juge, sauf l'adoption de *fora exceptionnels*, à l'égard d'une certaine catégorie de litiges.

(b) La règle posée (*sub a*) aura pour effet que le juge compétent pour décider un procès n'appartiendra pas toujours au pays dont les lois régissent le rapport de droit qui fait l'objet de ce procès. Cependant, l'adoption des (*fora exceptionnels*, mentionnés *sub a*), devra surtout avoir pour but de faire décider, autant que possible, par les juges du pays dont les lois régissent un rapport de droit, les procès qui concernent ce rapport, par exemple les procès que ont pour objet principal de faire statuer sur des questions d'état ou de capacité personnelle, par les tribunaux du pays dont les lois régissent le *status* personnel, etc.

(c) Dans les procès civils et commerciaux la *nationalité* des parties doit rester sans influence sur la compétence du juge, —sauf dans les cas où la *nature* même du litige doit faire admettre la compétence exclusive des juges nationaux de l'une des parties.

(d) Les tribunaux, saisis d'une contestation, doivent, à l'égard de la compétence adoptée par les traités statuer d'après les mêmes règles qui ont été établies à l'égard de la compétence, par les lois du pays. Ainsi, dans les pays où ce système est adopté pour l'application des lois nationales concernant la compétence des tribunaux, ils ne se déclareront pas incompétents d'*office*, quand il s'agit de l'incompétence *ratione personæ*.

(e) Les règles de droit international privé qui entreront dans les lois d'un pays par suite d'un traité international, seront appliquées par les tribunaux, sans qu'il y ait une obligation internationale de la part du gouvernement de veiller à cette application par voie administrative.

Règles internationales proposées pour prévenir les conflits de lois sur les formes de la procédure.

1. L'étranger sera admis à ester en justice aux mêmes conditions que le régnicole.

2. Les formes ordinatoires de l'instruction et de la procédure seront régies par la loi du lieu où le procès est instruit. Seront considérées comme telles, les prescriptions relatives aux formes de l'assignation (sauf ce qui est proposé ci-dessous, 2^{me} al.), aux délais de comparution, à la nature et à la forme de la procuration *ad litem*, au mode de recueillir les preuves, à la rédaction et au prononcé du jugement, à la passation en force de chose jugée, aux délais et aux formalités de l'appel et autres voies de recours, à la péremption de l'instance :

Toutefois, et par exception à la règle qui précède, on pourra statuer dans les traités que les assignations et autres exploits seront signifiés aux personnes établies à l'étranger, dans les formes prescrites par les lois du lieu de destination de l'exploit. Si, d'après les lois de ce pays, la signification doit être faite par

l'intermédiaire du juge, le tribunal appelé à connaître du procès requerra l'intervention du tribunal étranger par la voie d'une commission rogatoire.

3. L'admissibilité des moyens de preuve (preuve littérale, testimoniale, serment, livres de commerce, etc.) et leur force probante seront déterminées par la loi du lieu où s'est passé le fait ou l'acte qu'il s'agit de prouver.

La même règle sera appliquée à la capacité des témoins, sauf les exceptions que les États contractants jugeraient convenable de sanctionner dans les traités.

4. Le juge saisi d'un procès pourra s'adresser par commission rogatoire à un juge étranger, pour le prier de faire dans son ressort soit un acte d'instruction, soit d'autres actes judiciaires pour lesquels l'intervention du juge étranger serait indispensable ou utile.

5. Le juge à qui l'on demande de délivrer une commission rogatoire décide : (a) de sa propre compétence ; (b) de la légalité de la requête ; (c) de son opportunité lorsqu'il s'agit d'un acte qui légalement peut aussi se faire devant le juge du procès, p. ex. d'entendre des témoins, de faire prêter serment à l'une des parties, etc.

6. La commission rogatoire sera adressée directement au tribunal étranger, sauf intervention ultérieure des gouvernements intéressés, s'il y a lieu.

7. Le tribunal à qui la commission est adressée sera obligé d'y satisfaire après s'être assuré : 1° de l'authenticité du document, 2° de sa propre compétence *ratione materiæ* d'après les lois du pays où il siège.

8. En cas d'incompétence matérielle, le tribunal requis transmettra la commission rogatoire au tribunal compétent, après en avoir informé le requérant.

9. Le tribunal qui procède à un acte judiciaire en vertu d'une commission rogatoire applique les lois de son pays en ce qui concerne les formes du procès, y compris les formes des preuves et du serment.

L'Institut émet le vœu que les règles suivantes soient adoptées d'une manière uniforme dans les lois civiles de toutes les nations et que leur maintien soit garanti par des traités internationaux, qui devraient contenir en même temps la clause ci-après, comme complément à l'article I :

“ Les puissances contractantes s'engagent réciproquement à n'introduire à cette règle aucune exception nouvelle, sans le consentement de toutes les parties contractantes.

“ Les nations chez lesquelles il existe encore des exceptions, s'engagent à mettre leur législation intérieure le plus tôt possible en harmonie avec cette règle.”

I. L'étranger, quelle que soit sa nationalité ou sa religion jouit des mêmes droits civils que le régnicole, sauf les exceptions formellement établies par la législation actuelle.

II. L'enfant légitime suit la nationalité de son père.

III. L'enfant illégitime suit la nationalité de son père lorsque la paternité est légalement constatée ; sinon, il suit la nationalité de sa mère lorsque la maternité est légalement constatée.

IV. L'enfant né de parents inconnus, ou de parents dont la nationalité est inconnue, est citoyen de l'État sur le territoire duquel il est né, ou trouvé lorsque le lieu de sa naissance est inconnu.

V. La femme acquiert par le mariage la nationalité de son mari.

VI. L'état et la capacité d'une personne sont régis par les lois de l'État auquel elle appartient par sa nationalité.

Lorsqu'une personne n'a pas de nationalité connue, son état et sa capacité sont régis par les lois de son domicile.

Dans le cas où différentes lois civiles coexistent dans un même État, les questions relatives à l'état et à la capacité de l'étranger seront décidées selon le droit intérieur de l'État auquel il appartient.

VII. Les successions à l'universalité d'un patrimoine sont, quant à la détermination des personnes successibles, à l'étendue de leurs droits, à la mesure ou quotité de la portion disponible ou de la réserve, et à la validité intrinsèque des dispositions de dernière volonté, régis par les lois de l'État auquel appartenait le défunt, ou subsidiairement, dans les cas prévus ci-dessus à l'art. VI, par les lois de son domicile, quels que soient la nature des biens et le lieu de leur situation.

VIII. En aucun cas les lois d'un État ne pourront obtenir reconnaissance et effet dans le territoire d'un autre État, si elles y sont en opposition avec le droit public ou avec l'ordre public.

SOLUTION PACIFIQUE DES DIFFÉRENDS INTERNATIONAUX.

Projet de règlement pour la procédure arbitrale internationale (1^{er} vote à Genève, 2^{me} vote à La Haye).

L'Institut, désirant que le recours, à l'arbitrage pour la solution des conflits internationaux soit de plus en plus pratiqué par les peuples civilisés, espère concourir utilement à la réalisation de ce progrès en proposant pour les tribunaux arbitraux le règlement éventuel suivant. Il le recommande à l'adoption entière ou partielle des États qui concluraient des compromis.

Article 1. Le compromis est conclu par traité international valable.

Il peut l'être :

a) *D'avance*, soit pour toutes contestations, soit pour les contestations d'une certaine espèce à déterminer, qui pourraient s'élever entre les États contractants ;

b) Pour une contestation ou plusieurs contestations *déjà nées* entre les États contractants.

Art. 2. Le compromis donne à chacune des parties contractantes le droit de s'adresser au tribunal arbitral qu'il désigne pour la décision de la contestation. A défaut de désignation du nombre et des noms des arbitres dans le compromis, le tribunal arbitral se réglera selon les dispositions prescrites par le compromis ou par une autre convention.

A défaut de disposition, chacune des parties contractantes choisit de son côté un arbitre, et les deux arbitres ainsi nommés choisissent un tiers-arbitre ou désignent une personne tierce qui l'indiquera.

Si les deux arbitres nommés par les parties ne peuvent s'accorder sur le choix d'un tiers-arbitre, ou si l'une des parties refuse la co-opération qu'elle doit prêter selon le compromis à la formation du tribunal arbitral, ou si la personne désignée refuse de choisir, le compromis est éteint.

Art. 3. Si dès le principe, ou parce qu'elles n'ont pu tomber d'accord sur le choix des arbitres, les parties contractantes sont convenues que le tribunal arbitral serait formé par une personne tierce par elles désignée, et si la personne désignée se charge de la formation du tribunal arbitral, la marche à suivre à cet effet se réglera en première ligne d'après les prescriptions du compromis. A défaut de prescriptions, le tiers désigné peut ou nommer lui-même les arbitres ou pro-

poser un certain nombre de personnes parmi lesquelles chacune des parties choisira.

Art. 4. Seront capables d'être nommés arbitres internationaux les souverains et chefs de gouvernements sans aucune restriction, et toutes les personnes qui ont la capacité d'exercer les fonctions d'arbitre d'après la loi commune de leur pays.

Art. 5. Si les parties ont valablement compromis sur des arbitres individuellement déterminés, l'incapacité ou la récusation valable, fût-ce, d'un seul de ces arbitres, infirme le compromis entier, pour autant que les parties ne peuvent se mettre d'accord sur un autre arbitre capable.

Si le compromis ne porte pas détermination individuelle de l'arbitre en question, il faut, en cas d'incapacité ou de récusation valable, suivre la marche prescrite pour le choix originaire (§§ 2, 3).

Art. 6. La déclaration d'acceptation de l'office d'arbitre a lieu par écrit.

Art. 7. Si un arbitre refuse l'office arbitral, ou s'il se déporte après l'avoir accepté, ou s'il meurt, ou s'il tombe en état de démence, ou s'il est valablement récusé pour cause d'incapacité aux termes de l'article 4, il y a lieu à l'application des dispositions de l'article 5.

Art. 8. Si le siège du tribunal arbitral n'est désigné, ni par le compromis ni par une convention subséquente des parties, la désignation a lieu par l'arbitre ou la majorité des arbitres.

Le tribunal arbitral n'est autorisé à changer de siège qu'au cas où l'accomplissement de ses fonctions a lieu convenu est impossible ou manifestement périlleux.

Art. 9. Le tribunal arbitral, s'il est composé de plusieurs

membres, nomme un président, pris dans son sein, et s'adjoint un ou plusieurs secrétaires.

Le tribunal arbitral décide en quelle langue ou quelles langues devront avoir lieu ses délibérations et les débats des parties, et devront être présentés les actes et les autres moyens de preuve. Il tient procès-verbal de ses délibérations.

Art. 10. Le tribunal arbitral délibère tous membres présents. Il lui est loisible toutefois de déléguer un ou plusieurs membres ou même de commettre des tierces personnes pour certains actes d'instruction.

Si l'arbitre est un État ou son chef, une commune ou autre corporation, une autorité, une faculté de droit, une société savante, ou le président actuel de la commune, corporation, autorité, faculté, compagnie, tous les débats peuvent avoir lieu du consentement des parties devant le commissaire nommé *ad hoc* par l'arbitre. Il en est dressé protocole.

Art. 11. Aucun arbitre n'est autorisé sans le consentement des parties à se nommer un substitut.

Art. 12. Si le compromis ou une convention subséquente des compromettants prescrit au tribunal arbitral le mode de procédure à suivre, ou l'observation d'une loi de procédure déterminée et positive, le tribunal arbitral doit se conformer à cette prescription. A défaut d'une prescription pareille, la procédure à suivre sera choisie librement par le tribunal arbitral, lequel est seulement tenu de se conformer aux principes qu'il a déclaré aux parties vouloir suivre.

La direction des débats appartient au président du tribunal arbitral.

Art. 13. Chacune des parties pourra constituer un ou plusieurs représentants auprès du tribunal arbitral.

Art. 14. Les exceptions tirées de l'incapacité des arbitres,

doivent être opposées avant toute autre. Dans le silence des parties toute contestation ultérieure est exclue, sauf les cas d'incapacité postérieurement survenue.

Les arbitres doivent prononcer sur les exceptions tirées de l'incompétence du tribunal arbitral, sauf le recours dont il est question à l'art. 24, 2^{me} al., et conformément aux dispositions du compromis.

Aucune voie de recours ne sera ouverte contre des jugements préliminaires sur la compétence, si ce n'est cumulativement avec le recours contre le jugement arbitral définitif.

Dans le cas où le doute sur la compétence dépend de l'interprétation d'une clause du compromis, les parties sont censées avoir donné aux arbitres la faculté de trancher la question, sauf clause contraire.

Art. 15. Sauf dispositions contraires du compromis, le tribunal arbitral a le droit :

1. De déterminer les formes et délais dans lesquels chaque partie devra, par ses représentants dûment légitimés, présenter ses conclusions, les fonder en fait et en droit, proposer ses moyens de preuve au tribunal, les communiquer à la partie adverse, produire les documents dont la partie adverse requiert la production ;

2. De tenir pour accordées les prétentions de chaque partie qui ne sont pas nettement contestées par la partie adverse, ainsi que le contenu prétendu des documents dont la partie adverse omet la production sans motifs suffisants ;

3. D'ordonner de nouvelles auditions des parties, d'exiger de chaque partie l'éclaircissement de points douteux ;

4. De rendre des ordonnances de procédure (sur la direction du procès), faire administrer des preuves, et requérir, s'il le faut, du tribunal compétent les actes judiciaires pour lesquels

le tribunal arbitral n'est pas qualifié, notamment l'assermentation d'experts et de témoins ;

5. De statuer selon sa libre appréciation, sur l'interprétation des documents produits et généralement sur le mérite des moyens de preuves présentés par les parties.

Les formes et délais mentionnés sous les numéros 1 et 2 du présent article seront déterminés par les arbitres dans une ordonnance préliminaire.

Art. 16. Ni les parties, ni les arbitres ne peuvent d'office mettre en cause d'autres États ou des tierces personnes quelconques, sauf autorisation spéciale exprimée dans le compromis et consentement préalable du tiers.

L'intervention spontanée d'un tiers n'est admissible qu'avec le consentement des parties qui ont conclu le compromis.

Art. 17. Les demandes reconventionnelles ne peuvent être portées devant le tribunal arbitral qu'en tant qu'elles lui sont déferées par le compromis, ou que les deux parties et le tribunal sont d'accord pour les admettre.

Art. 18. Le tribunal arbitral juge selon les principes du droit international, à moins que le compromis ne lui impose des règles différentes ou ne remette la décision à la libre appréciation des arbitres.

Art. 19. Le tribunal arbitral ne peut refuser de prononcer sous le prétexte qu'il n'est pas suffisamment éclairé soit sur les faits soit sur les principes juridiques qu'il doit appliquer.

Il doit décider définitivement chacun des points en litige. Toutefois, si le compromis ne prescrit pas la décision définitive simultanée de *tous* les points, le tribunal peut, en décidant définitivement certains points, réserver les autres pour une procédure ultérieure.

Le tribunal arbitral peut rendre des jugements interlocutoires ou préparatoires.

Art. 20. Le prononcé de la décision définitive doit avoir lieu dans le délai fixé par le compromis ou par une convention subséquente. A défaut d'autre détermination, on tient pour convenu un délai de deux ans à partir du jour de la conclusion du compromis. Le jour de la conclusion n'y est pas compris ; on n'y comprend pas non plus le temps durant lequel un ou plusieurs arbitres auront été empêchés, par force majeure, de remplir leurs fonctions.

Dans le cas où les arbitres, par des jugements interlocutoires, ordonnent des moyens d'instruction, le délai est augmenté d'une année.

Art. 21. Toute décision définitive ou provisoire sera prise à la majorité de tous les arbitres nommés, même dans le cas où l'un ou quelques-uns des arbitres refuseraient d'y prendre part.

Art. 22. Si le tribunal arbitral ne trouve fondées les prétentions d'aucune des parties, il doit le déclarer, et, s'il n'est limité sous ce rapport par le compromis, établir l'état réel du droit relatif aux parties en litige.

Art. 23. La sentence arbitrale doit être rédigée par écrit, et contenir un exposé des motifs, sauf dispense stipulée par le compromis. Elle doit être signée par chacun des membres du tribunal arbitral. Si une minorité refuse de signer, la signature de la majorité suffit, avec déclaration écrite que la minorité a refusé de signer.

Art. 24. La sentence, avec les motifs s'ils sont exposés, est notifiée à chaque partie. La notification a lieu par signification d'une expédition au représentant de chaque partie ou à un fondé de pouvoirs de chaque partie constitué *ad hoc*.

Même si elle n'a été signifiée qu'au représentant ou au fondé de pouvoirs d'une seule partie, la sentence ne peut plus être changée par le tribunal arbitral.

Il a néanmoins le droit, tant que les délais du compromis ne sont pas expirés, de corriger de simples fautes d'écriture ou de calcul, lors même qu'aucune des parties n'en ferait la proposition, et de compléter la sentence sur les points litigieux non décidés, sur la proposition d'une partie et après audition de la partie adverse. Une interprétation de la sentence notifiée n'est admissible que si les deux parties la requièrent.

Art. 25. La sentence dûment prononcée décide dans les limites de sa portée, la contestation entre les parties.

Art. 26. Chaque partie supportera ses propres frais et la moitié des frais du tribunal arbitral, sans préjudice de la décision du tribunal arbitral touchant l'indemnité que l'une ou l'autre des parties pourra être condamnée à payer.

Art. 27. La sentence arbitrale est nulle en cas de compromis nul, ou d'excès de pouvoir, ou de corruption prouvée d'un des arbitres ou d'erreur essentielle.

ARBITRAGE INTERNATIONAL.—CLAUSE COMPROMISSOIRE.

Résolution votée en séance du 12 Septembre 1877.

L'Institut de droit international recommande avec instance d'insérer dans les futurs traités internationaux une clause compromissoire, stipulant le recours à la voie de l'arbitrage en cas de contestation sur l'interprétation et l'application de ces traités.

L'Institut propose en même temps, en considération de la difficulté que les parties pourront avoir à s'entendre préalablement sur la procédure à suivre, l'addition, à la clause compromissoire, de la disposition qui suit :

Si les États contractants ne sont pas tombés d'accord préalablement sur d'autres dispositions touchant la procédure à suivre devant le tribunal arbitral, il y a lieu d'appliquer le règlement consacré par l'Institut dans sa session de La Haye, le 28 août 1875.

No. XVI.

ALPHABETICAL LIST, WITH DATES, OF IMPORTANT
INTERNATIONAL EVENTS.

Aberdeen, Earl of, "Athenian Aberdeen"	1784-1860.
Abd-el-Kader, the Emir	1807-1873.
Abo, peace of	Aug. 7, 1743.
Aboukir, battle of (Bonaparte defeats Turks)	July 25, 1799.
Do. (capitulation of, to British)	March 18, 1801.
Abyssinia, treaty of friendship with	Nov. 2, 1849.
Do. war with	Jan. 4 to June 2, 1868.
Acre stormed	Nov. 3, 1840.
Aden taken by British	Jan. 19, 1839.
Adrianople taken by Russians	Aug. 20, 1829.
Do. do.	Jan. 20, 1878.
Do. treaty of—recognition by Porte of independence of Greece	Sept. 14, 1829.
Afghan war, first—begins by proclamation against Dost Mahomed	Oct. 1, 1838.
Do. close of first war by evacuation of Cabul and destruction of bazaar and forts	Oct. 12, 1842.
Afghan war, second—begins with battle of Ali Musjid	Nov. 22, 1878.
Do. close of second war by evacuation of Candahar	Oct. 1880.
Afghanistan, convention of Cabul with Akbar Khan which led to massacre	Jan. 6, 1842.
Afghanistan, treaty of Gandamak	May 26, 1879.
Agincourt, battle of	Oct. 25, 1415.
Aix-la-Chapelle, treaty of (peace between France and Spain)	May 2, 1668.
Do. treaty of (peace between Great Britain, France, Holland, Germany, Spain, and Genoa)	Oct. 18, 1748.
Do. conference of	Nov. 1818.

Akerman, treaty of	Sept. 4, 1826.
Alabama Claims Treaty	May 8, 1871.
Do. arbitration at Geneva	Sept. 14, 1872.
Aland Islands, convention regarding, between Austria and Turkey	March 3, 1856.
Alarcos, battle of (Moors defeat Spaniards)	July 19, 1195.
Albuera, battle of	May 10, 1811.
Alexandria, convention of, by Napoleon	July 5, 1798.
Do. battle of (Abercrombie's victory)	March 21, 1801.
Alexandrian forts bombarded	July 11, 1882.
Alexinatz, battle of	Sept. 28-29, 1876.
Do. captured	Oct. 31, 1876.
Algiers bombarded by British fleet	Aug. 27, 1816.
Do. captured by the French	July 5, 1830.
Do. French expedition against — remonstrance of Great Britain	Mar. 5-July 16, 1830.
Alliance of the Rhine	Aug. 15, 1658.
Do. Triple (England, Holland, and Sweden)	Jan. 23, 1668.
Do. of Warsaw	March 31, 1683.
Do. the Grand (Vienna)	May 12, 1689.
Do. the Defensive, of Denmark	Jan. 20, 1701.
Do. the Second Grand (the Hague)	Sept. 7, 1701.
Do. the Triple, of the Hague	Jan. 4, 1717.
Do. the Quadruple (London)	Aug. 2, 1718.
Do. of Hanover	Sept. 3, 1725.
Do. of Vienna (Germany and Russia)	Aug. 6, 1728.
Do. of Nymphenburgh	May 18, 1741.
Do. of Fontainebleau (France and Spain)	Oct. 25, 1743.
Do. of Westminster, the	Jan. 16, 1756.
Do. of Versailles, the	May 1, 1756.
Do. of Fontainebleau, between France, Germany, and the States of the Netherlands	Nov. 10, 1785.
Do. of St Ildefonso	Aug. 19, 1796.
Do. against French Republic, Napoleon, &c. (see Coalition)	June 22, 1799.
Do. the Quadruple, of Chaumont	March 1, 1811.
Do. against Russia	March 24, 1812.
Do. of Kalish (Russia and Prussia)	Feb. 27, 1813.
Do. of Töplitz	Sept. 9, 1813.
Do. of Naples (Austria and Murat)	Jan. 11, 1814.
Do. of Vienna	March 25, 1815.
Do. treaty of (Great Britain, Austria, France)	Dec. 2, 1854.
Do. Defensive (Great Britain, France, Sweden, and Norway).	Nov. 21, 1855.
Do. Defensive (Turkey and Great Britain)	June 4, 1878.
Alma, battle of	Sept. 20, 1854.
Almanza, battle of	April 25, 1707.

Alt Rastadt, peace of	Sept. 24, 1706.
Amazon, navigation of, treaty regulating	Oct. 23, 1851.
America (peace of Paris)	Sept. 3, 1783.
Do. do. Ghent (second war)	Dec. 24, 1814.
American Convention for settlement of war indemnity	Nov. 13, 1826.
Do. Treaty, the (Spain, England, and France)	1686.
Do. Civil War, outbreak of	April 13, 1861.
Do. do. close of	May 26, 1865.
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Do. pacification of, treaty for, between Russia, Great Britain, and France	July 6, 1827.
Do. independence of, secured by conference of London	Feb. 3, 1830.
Do. sovereignty of, convention between Britain, Russia, France, and Bavaria	May 7, 1832.
Do. throne of, treaty with Denmark	July 13, 1863.
Greek frontier, convention signed at Constantinople	May 24, 1881.
Gustavus Adolphus issues manifesto on entering Germany	July 1630.
Hague, treaty of	May 21, 1659.
Do. do.	May 7, 1669.
Do. partition treaty of	Oct. 11, 1698.
Do. treaty of (Great Britain and Netherland States with Prussia)	April 19, 1794.
Hamburg, peace of	May 2, 1762.
Hanover, treaty and alliance of	Sept. 3, 1725.
Do. treaty of (Hanover and England)	July 22, 1834.
Hastings, battle of	Oct. 14, 1066.

Hayti, Republic of, extradition treaty	Dec. 7, 1874.
Heilbron, treaty of, for confederation of Crown of Sweden and Protestant States and Princes of Germany	March 1633.
Helsingburgh, treaty of	Aug. 31, 1805.
Hérat, treaty securing independence of, signed at Teheran	Jan. 25, 1853.
Hermit, Peter the, preaches first Crusade	1095.
Hernani, battle of (Carlists defeated)	May 5, 1836.
Hildebrand	1013-1085.
Hohenlinden, convention of	Sept. 20, 1800.
Do. battle of	Dec. 3, 1800.
Hohenzollern, treaty for cession of, to Prussia	Dec. 7, 1849.
Holland joined to France by decree of Napoleon	July 9, 1809.
Do. Louis Napoleon renounces throne of	July 1-3, 1809.
Do. and Belgium, treaty for separation of	Nov. 15, 1831.
Holy Alliance	Sept. 26, 1815.
Do. League	1576.
Hubertsburg, peace of	Feb. 15, 1763.
Hudson's Bay and Puget Sound Company, treaty with United States	July 1, 1863.
Hungary, united to Austria	1526.
Do. self-government granted to	Feb. 17, 1867.
Hyder Aly and East India Company, treaty of alliance between	Feb. 23, 1768.
Iberian Peninsula, Quadruple Alliance for peace of	April 22, 1834.
Ignatieff, General	1832-
India, Queen of England made Empress of, by Act of Parliament	April 27, 1876.
Innocent X. protests against the peace of Westphalia	Nov. 26, 1668.
Ionian Islands, treaty of London for cession of, to Greece	Nov. 14, 1863, and March 29, 1864.
Ireland invaded by Henry II.	1168.
Isandula, battle of (Zululand)	Jan. 22, 1879.
Italian provinces reunited to Austria	April 7, 1815.
Italian war (Austria, France, and Sardinia), outbreak of hostilities	May 3, 1859.
Do. close of, by peace of Villafranca	July 11, 1859.
Italy, peace of, signed at Querasque	April 6, 1631.
Do. government changed from republic to kingdom	March 17, 1805.
Do. unification of, under Victor Emmanuel, who is proclaimed king	Feb. 26, 1861.
Do. extradition treaty with	Feb. 5, 1873.
Japan, treaties between France and Great Britain and	Aug. 26 and Oct. 9, 1858.

Japan, memorandum of coercive measures by France, Netherlands, and United States	July 22, 1864.
Japanese convention after war	Oct. 22, 1864.
Do. ports opened	July 9, 1867.
Jassy, treaty of (Crimea annexed to Russia)	Jan. 9, 1792.
Jay's treaty	Nov. 19, 1794.
Jena, battle of	Oct. 14, 1806.
Jesuits, order of, founded by Ignatius Loyola	Aug. 16, 1534.
Do. institution confirmed by Papal bull	Sept. 27, 1548.
Do. condemned by the Paris Sorbonne	1554.
Do. expelled by Parliament from England	1579-1586.
Do. expelled from France	1594.
Do. renewed expulsion from England	1602.
Do. readmitted to France	1604.
Do. expelled from Venice	1607.
Do. do. Holland	1708.
Do. do. Portugal	1759.
Do. do. France, and property confiscated	1764.
Do. do. Spain	1767.
Do. order suppressed by a bull by Pope Clement XIV.	July 21, 1773.
Do. order restored by Pope Pius VI.	Aug. 7, 1814.
Do. expelled from Holland and Belgium	1818.
Do. do. Russia	1820.
Do. do. Great Britain, by Catholic Relief Act	1829.
Do. do. Portugal	1834.
Do. do. Spain	1820-1835.
Do. do. France	1831-1845.
Do. do. Austria and Sardinia	1848.
Do. do. Germany	July 5, 1872.
Do. do. Italy	Nov. 2, 1873.
Do. order dissolved in France by decree	March 30, 1880.
Do. and other orders expelled from France	June 30, 1880.
Junot, Duke d'Abrantés	1771-1813.
Kalish, alliance of (Russia and Prussia)	Feb. 27, 1813.
Kalitsch, battle of (Russians defeat Swedes)	Nov. 19, 1706.
Kanlidja, protocol of, pacification of Servia	Sept. 4, 1862.
Kashgar and Yarkund, treaty of	Feb. 2, 1874.
Kaynardji or Koutschouc-Kaynardji, treaty of	July 21, 1774.
Keith, Field-marshal	1696-1758.
Keith, Sir Robert Murray	1730-1795.
Kiel, peace of (Great Britain, Sweden, and Denmark)	Jan. 14, 1814.
Killiecrankie, battle of	July 27, 1689.
Kisséleff, General	1795-1851.
Kleber, Jean Baptiste	1754-1800.
Koniggrätz, battle of	July 3, 1866.
Koskiusko, Count	1756-1817.

Kossuth, Louis	1806-
Kragonievatz, treaty of, Serbian nationality	June 29-July 12, 1869.
Lake, Gerrard, Viscount	1744-1808.
Lang's Nek, battle of (Transvaal)	Jan. 28, 1881.
Largs, battle of (Scots defeat Norsemen)	Oct. 3, 1263.
Lawrence, Lord, Governor-General of India, &c.	1811-1879.
Laybach, congress of	May 6, 1821.
League of Augsburg against France	1686.
Leipsic alliance	April 1631.
Do. battle of (Gustavus beats Tilly)	Sept. 7, 1631.
Do. do. (Swedes defeat Austrians)	Oct. 23, 1642.
Do. do. (Napoleon defeated)	Oct. 16-18, 1813.
Leoben, treaty of	April 18, 1797.
Lepanto, battle of (Don John defeats the Turks)	Oct. 7, 1571.
Levant, pacification of, convention between great Powers for	July 15, 1840.
Lewes, battle of (Barons victorious)	May 14, 1264.
Lexington, battle of (America)	April 19, 1775.
Liberia, independence of	Aug. 26, 1847.
Lima, treaty of, for regulating navigation of the Amazons	Oct. 23, 1851.
Lisbon, peace of	Feb. 13, 1668.
Lombardy, cession of, to Sardinia	Nov. 10, 1859.
London, partition treaty of	March 25, 1700.
Do. Quadruple Alliance of	Aug. 2, 1718.
Do. convention of (Great Britain and America)	Nov. 13, 1826.
Do. conference of, independence of Greece	Feb. 3, 1830.
Do. do. regarding Netherlands	{ Nov. 4, 1830-Nov. 15, 1831.
Do. convention of, regarding Belgium	April 16, 1839.
Do. treaty of (Syria)	July 15, 1840.
Do. do. succession to Danish Crown	May 8, 1852.
Do. do. cession of Ionian Islands to Greece	{ Nov. 14, 1863, and March 29, 1864.
Do. do. neutrality of Luxemburg	May 11, 1867.
Do. do. independence and neutrality of Belgium (Prussia and Great Britain)	Aug. 9, 1870.
Do. do. do. (France and Great Britain)	Aug. 11, 1870.
Do. do. (Black Sea)	March 13, 1871.
Lorraine ceded by treaty by Charles III., Duke of Lorraine, to Louis XIV.	Feb. 6, 1662.
Louis XIV. declares war against England	Jan. 26, 1666.
Louis Napoleon renounces throne of Holland	July 1-3, 1809.
Loyola, Ignatius de, founder of the Jesuits	1491-1566.
Lubeck, peace of	May 22, 1629.
Luneville, peace of	Feb. 9, 1801.
Luxemburg, neutrality of, settled by treaty of London	May 11, 1867.

Luxemburg, extradition treaty with	Nov. 24, 1880.
M'Mahon, Marshal	1808-
Madagascar, treaty regarding slave-trade and piracy, with Great Britain	Oct. 23, 1817.
Madrid, treaty of, to establish peace in America	July 18, 1670.
Do. treaty of	1750.
Do. peace of (Russia and Spain)	Oct. 14, 1801.
Magdala, capture of	April 13, 1868.
Magenta, battle of	June 4, 1859.
Magna Charta, granted at Runnymede	June 15, 1215.
Majuba Hill, battle of (Transvaal)	Feb. 27, 1881.
Malplaquet, battle of	Sept. 11, 1709.
Malta and Italy, extradition ordinance	Feb. 21, 1863.
Managua, treaty of (Great Britain and Nicaragua, Panama Canal)	Feb. 11, 1860.
Mansfeld, Ernest, Count	1585-1626.
Manteuffel, Baron	1809-
Marengo, battle of	June 16, 1800.
Do. armistice and convention of	June 16-20, 1800.
Maria Theresa	1717-1780.
Marie-Therese, Infant of Spain, Act of Renunciation	June 2, 1660.
Maritime Association of the Powers of the North	Jan. 1801.
Do. law, declaration of, in treaty of Paris	April 16, 1856.
Marlborough, Duke of	1650-1722.
Marmont, Marshal	1774-1852.
Marston Moor, battle of	July 2, 1644.
Maassena, Marshal	1758-1817.
Maximilian accepts crown of Mexico	April 10, 1864.
Do. Emperor of Mexico, murdered	June 19, 1867.
Mayence, treaty of, between Gustavus Adolphus and Catholic States of Germany	Jan. 29, 1632.
Do. convention of, as to Rhine	March 31, 1831.
Mazarin, Julius, Cardinal	1602-1661.
Mazra, battle of, close of second Afghan war	Sept. 1, 1880.
Mazzini, Joseph	1805-1872.
Mehemet Ali, Viceroy	1769-1841.
Menschikoff, Prince	1789-1869.
Metternich, Prince	1773-1859.
Mexico, independence of, by treaty of Aquala	Aug. 23, 1821.
Do. recognition withdrawn from, by great Powers	July 1867.
Do. do. restored	Dec. 1883.
Mexican expedition (France, Spain, and Great Britain)	Jan. 7, 1862.
Milan, treaty of (France and Venice)	May 16, 1797.
Do. decree of, by Napoleon	Dec. 17, 1807.
Do. peace of (Austria and Sardinia)	Aug. 6, 1849.
Do. proclamation of, by Napoleon III.	June 8, 1859.

Military warfare, conference on rules of, at Brussels	July 27, 1874.
Minden, battle of	Aug. 1, 1759.
Mirabeau, Count	1749-1791.
Mohacz, battle of (Turks defeated)	Aug. 12, 1687.
Moltke, Baron von	1800-
Molwitz, battle of (Prussians defeat Austrians)	April 10, 1741.
Monroe doctrine promulgated	1817-1824.
Montebello, battle of	June 9, 1800.
Do. do. (Italians and French defeat Austrians)	May 20, 1859.
Montfort, Simon de	1206-1265.
Moore, General Sir John	1761-1809.
Morea, evacuation of, treaty for	Aug. 6, 1828.
Moreau, General	1763-1813.
Moscow burned by Russians	Sept. 15, 1812.
Munich, treaty of	March 16, 1800.
Do. do. (Austria, Bavaria, Saxony, and Wur-	
temburg) German Union	Feb. 27, 1850.
Do. convention of, monetary	Aug. 6 and 7, 1858.
Munster, treaty of, signed	Oct. 24, 1648.
Murat, Joachim	1767-1815.
Nankin, treaty of	Aug. 29, 1842.
Nantes, Edict of, issued by Henry IV.	April 13, 1598.
Do. do. revoked by Louis XIV.	Oct. 22, 1685.
Napier and Ettrick, Lord	1819-
Napier, Lord (of Magdala)	1810-
Napier, Sir William F. P.	1785-1860.
Naples, alliance of (Austria and Murat)	Jan. 11, 1814.
Napoleon I.	1769-1821.
Napoleon proclaimed Emperor by Sénatus-consulte	May 18, 1804.
Do. convention for his safe keeping	Aug. 2, 1815.
Do. Act of English Parliament to detain him at	
St Helena passed	April 11, 1816.
Napoleon III.	1808-1879.
Narva, battle of (Charles XII. defeats Russians)	Nov. 30, 1700.
Naseby, battle of	June 14, 1645.
Nationalities, oppressed, French National Convention	
decrees help to all	Nov. 19, 1792.
Naturalisation, convention with United States, &c.	May 13, 1870.
Naturalisation of Englishmen in France, Lord Brougham's	
correspondence	April 7-12, 1848.
Navarino, battle of	Oct. 28, 1827.
Navigation Laws repealed	June 26, 1849.
Navigation of the Rhine, convention on	Aug. 15, 1804.
Negroes, assent of Madrid, obliging England to supply	
negro slaves to Spanish America	May 1, 1713.
Nelson, Lord	1758-1805.

Nesselrode, Count	1780-1862.
Netherlands, conference of London on separation of	Nov. 4, 1830.
Do. extradition treaty with	July 19, 1874.
Neuchatel, treaty of Paris for settlement of	May 26, 1857.
Neutralisation of Switzerland guaranteed	Nov. 20, 1815.
Do. Luxembourg do.	May 11, 1867.
Do. Belgium do.	Aug. 11, 1870.
Neutrals and letters of marque, declaration by Great Britain regarding	March 28, 1854.
Newfoundland Fisheries, treaty with United States	May 8, 1871.
New Zealand, proclamation of sovereignty by Great Britain	Feb. 5 and May 21, 1840.
Ney, Marshal	1769-1815.
Nice and Savoy, treaty for cession of to France	March 24, 1860.
Nicolas, Czar, manifesto on the agitation in Europe	March 14-26, 1848.
Nikolsburg, peace of (Austro-Prussian war)	July 26, 1866.
Nile, battle of	Aug. 1, 1798.
Nile, navigation of, notification regarding	Oct. 12, 1841.
Niméguen, treaty of	Aug. 10, 1678.
Nive, passage of the	Dec. 10-13, 1813.
North American Fisheries award	Nov. 23, 1877.
North German Confederation formed	Aug. 1866.
North, Powers of the, treaty between France, England, and Holland to compel the, to make peace	May 21, 1659.
Novare, convention of	March 26, 1849.
Nuremburg, convention of	July 2, 1650.
Nymphenburgh, alliance of	May 18, 1741.
Nystadt, treaty of	Aug. 30, 1721.
Œcumenical Council of Rome (infallibility). (See {	Dec. 8, 1869-July
Councils of the Church.)	18, 1878.
Oliva, peace of	May 3, 1660.
Olivier, Émile	1825-
Olmütz, convention of	Nov. 29, 1850.
Omer Pasha	1806-1871.
Oppressed peoples, French National Convention decrees help to all	Nov. 19, 1792.
Orebro, peace of (Russia and Great Britain)	July 18, 1812.
Oregon boundary treaty (Vancouver's Island and Columbia River)	June 15, 1846.
Orleans, battle of	April 29, 1629.
Osman I., treaty of peace with Sigismund I. of Poland	1621.
Osnabruck, treaty of	1642-1648.
Otto of Bavaria recognised King of Greece	Oct. 4, 1832.
Oudenarde, battle of	July 11, 1708.
Pacific, North-west coast of, convention with Russia regarding	Feb. 28, 1825.

Palermo, convention of	May 30, 1808.
Palmerston, Lord	1784-1865.
Panama, congress of	Aug. 16, 1825.
Do. Canal, convention relative to, between United States and Great Britain	April 19, 1850.
Paris, peace of, and treaty (France, Spain, Portugal, England)	Feb. 10, 1763.
Do. do. (Great Britain and America)	Sept. 3, 1783.
Do. do. (Great Britain and Holland)	May 20, 1784.
Do. do. (Russia and France)	Oct. 8, 1801.
Do. treaty of (alliance against Russia)	March 24, 1812.
Do. peace of (France with Austria and her allies, Russia, Great Britain, Prussia)	May 30, 1814.
Do. do. (second great)	Nov. 20, 1815.
Do. conference of, regarding territorial arrangements	Nov. 3, 1815.
Do. treaty of	June 10, 1817.
Do. peace of (Crimean war)	March 30, 1856.
Do. treaty of (guarantee of Turkish empire)	April 15, 1856.
Do. do. settlement of Neuchatel	May 26, 1857.
Do. convention of, relative to Syria	Sept. 5, 1860.
Do. capitulation of	Jan. 28, 1871.
Partition treaty, the first (The Hague)	Oct. 11, 1698.
Do. the second (London)	March 25, 1700.
Partition of Poland, first	Feb. 17, 1772.
Do. second	1793.
Do. third	Jan. 3, 1795.
Do. final	Jan. 28, 1797.
Passarowitz, peace of	March 13, 1718.
Paul V. excommunicates the Venetian State	April 17, 1606.
Peace of Abo	Aug. 7, 1743.
Do. Adrianople	Sept. 2-14, 1829.
Do. Aix-la-Chapelle	Oct. 18, 1748.
Do. Akerman	Sept. 4, 1826.
Do. 'Alt Rastadt	Sept. 24, 1706.
Do. Badajoz (Spain and Portugal)	June 6, 1801.
Do. Baden	Sept. 7, 1714.
Do. Bâle	July 22, 1795.
Do. Belgrade (Russia and Porte)	Sept. 18, 1739.
Do. Berlin (Prussia and Hungary)	July 28, 1742.
Do. do. (Prussia and Denmark)	Aug. 5, 1814.
Do. do. (Prussia and Denmark)	July 10, 1849.
Do. Breda	July 31, 1667.
Do. Breslau	June 11, 1742.
Do. Bretigny	May 8, 1360.
Do. Campo Formio	Oct. 17, 1797.
Do. Copenhagen	May 27, 1660.
Do. Dresden	Dec. 25, 1745.

Peace of Florence (France and Sicilies)	March 28, 1801.
Do. Fonimanah (Ashantee)	Feb. 13, 1874.
Do. Fontainebleau	Sept. 2, 1679.
Do. do. (France and allies with Great Britain)	Feb. 10, 1763.
Do. do. (Emperor and the German States)	Nov. 8, 1785.
Do. Frankfort (Germany and France)	May 10, 1871.
Do. Frederickshamm (Russia and Sweden)	Sept. 17, 1809.
Do. Fuessen	April 23, 1745.
Do. Fulde	Nov. 8, 1814.
Do. Ghent	Nov. 8, 1576.
Do. do. (Great Britain and America)	Dec. 24, 1814.
Do. Guadalope Hidalgo	Feb. 2, 1848.
Do. Hamburg	May 2, 1762.
Do. Hubertsburg	Feb. 15, 1763.
Do. Kiel (Great Britain, Sweden, and Denmark)	Jan. 14, 1814.
Do. Leoben	April 18, 1797.
Do. Lisbon	Feb. 13, 1668.
Do. Lubeck	May 22, 1629.
Do. Luneville	Feb. 9, 1801.
Do. Madrid (Russia and Spain)	Oct. 14, 1801.
Do. Milan (Austria and Sardinia)	Aug. 6, 1849.
Do. Nankin	Aug. 29, 1842.
Do. Nicolsburg, (Austro-Prussian War)	July 26, 1866.
Do. Niméguen	Aug. 10, 1678.
Do. Oliva	May 3, 1660.
Do. Orebro (Great Britain and Russia)	July 18, 1872.
Do. Paris (France, Spain, Portugal, and England)	Feb. 10, 1763.
Do. do. (Great Britain and America)	Sept. 3, 1783.
Do. do. (Great Britain and Holland)	May 20, 1784.
Do. do. (Russia and France)	Oct. 8, 1801.
Do. do. (Sweden)	Jan. 6, 1810.
Do. do. between France, Russia, Great Britain, Prussia, and Austria	May 30, 1814.
Do. do. (second great)	Nov. 20, 1815.
Do. do. (Allies and Russia)	March 30, 1856.
Do. Passarowitz	March 13, 1718.
Do. Peking	Aug. 24, 1860.
Do. St Petersburg (Russia and Prussia)	May 5, 1762.
Do. St Petersburg	Aug. 5, 1772.
Do. do.	April 8, 1805.
Do. Posen	Dec. 11, 1806.
Do. Prague	May 30, 1635.
Do. do. (seven weeks' war)	Aug. 23, 1866.
Do. Presburg	Dec. 26, 1805.
Do. Pyrenees	Nov. 7, 1659.
Do. Querasque	April 6, 1631.

Peace of Radstadt	March 6, 1714.
Do. Ratisbon	Oct. 13, 1630.
Do. Ryswick	Sept. 20, 1697.
Do. treaty of, between Saxony and Prussia	Oct. 21, 1866.
Do. of St Germainson-Laye	June 29, 1679.
Do. Schönbrunn	Oct. 14, 1809.
Do. Seville	Nov. 9, 1729.
Do. Siöröd	1613.
Do. Sistowa	Aug. 4, 1791.
Do. Stettin	Dec. 13, 1570.
Do. Stockholm	Nov. 20, 1719.
Do. Teheran	April 14, 1857.
Do. Temeswar	Sept. 7, 1664.
Do. Teschin	May 13, 1779.
Do. Teusin	May 18, 1595.
Do. Tien-Tsin	June 26, 1858.
Do. Tilsit (France, Russia, and Prussia)	July 7, 1807.
Do. Tolentino	Feb. 19, 1797.
Do. Toplitz	Sept. 9, 1813.
Do. Turkmanchay	Feb. 22, 1828.
Do. Ulm	July 3, 1620.
Do. Utrecht	April 11, 1713.
Do. Valençay	Dec. 8, 1813.
Do. Vera Cruz	March 9, 1839.
Do. Versailles (Great Britain, France, and Spain)	Sept. 3, 1783.
Do. Vienna	April 30, 1725.
Do. do.	Nov. 18, 1738.
Do. do. (Austria and France)	Oct. 14, 1809.
Do. do. (Denmark and Germany)	Oct. 30, 1864.
Do. do. (Austria and Italy)	Oct. 3, 1866.
Do. Villa-Franca	July 12, 1859.
Do. Vossem	Jan. 16, 1673.
Do. Westminster	Feb. 10, 1674.
Do. Westphalia	Oct. 24, 1648.
Do. Zurich (Austria, France, and Sardinia)	Nov. 10, 1859.
Persia, declaration of war against, by Great Britain	Nov. 1, 1856.
Do. peace between Great Britain and, signed at Paris	March 4, 1857.
Peter the Great	1672-1725.
Petersburg, St, peace of (Russia and Prussia)	May 5, 1762.
Do. peace of	Aug. 5, 1772.
Do. the Triple Alliance of (Germany, Great Britain, and Russia)	Sept. 28, 1795.
Do. convention of (Great Britain and Russia)	June 22, 1798.
Do. peace of	April 8, 1805.
Do. International Telegraph Convention at	July 10-22, 1875.

Peterswald, convention of	July 8, 1813.
Pilnitz, convention of	July 20, 1791.
Pitt, William, Earl of Chatham	1708-1778.
Pitt, William	1759-1806.
Pius IX., encyclical letter of	Nov. 9, 1846.
Do. issues proclamation to his subjects from Gaëta	Jan. 1, 1849.
Plassey, battle of (Clive's victory)	June 23, 1757.
Plevna, battles of July 19, 20, 30, and 31, 1877.	
Do. do.	Sept. 7-12, 1877.
Do. fall of	Dec. 10, 1877.
Po, free navigation of, convention securing	July 3, 1849.
Poitiers, battle of	Sept. 19, 1356.
Poland, abdication of last king of	Nov. 25, 1795.
Do. first partition treaty signed (Russia, Prussia, and Austria)	Feb. 17, 1772.
Do. second partition of	1793.
Do. third partition of	Jan. 3, 1795.
Do. final partition of	Jan. 26, 1797.
Do. treaty between Russia and Prussia defining boundaries of	March 4, 1835.
Do. incorporation of kingdom into Russia, Count de Nesselrode upon	Dec. 10, 1846.
Do. insurrection in and annexation of Cracow to Austria	Jan.-March 1846.
Polish refugees, protocol regarding, between Russia and Great Britain	Dec. 25, 1849.
Polotsk, battle of July 30 and 31, 1812	
Poniatowski, Count	1678-1762
Ponsonby, Lord	1770-1855.
Pope, English ambassadors to the, legalised	Sept. 4, 1848.
Pope Pius IX. leaves Rome	Nov. 25, 1848.
Posen, peace of	Dec. 11, 1806.
Postal Union Treaty signed at Berne	Oct. 9, 1874
Potscheran, capitulation of	Dec. 30, 1812
Potsdam, convention of (Russia and Prussia)	Nov. 3, 1805.
Pragmatic Sanction	1438.
Do.	April 17, 1713.
Do. or royal decree which fixes the order of succession of Spanish crown	March 29, 1830.
Prague, battle of	May 6, 1757.
Do. peace of	May 30, 1635.
Do. do. (seven weeks' war)	Aug. 23, 1866.
Presburg, peace of	Dec. 26, 1805.
Prestonpans, battle of	Sept. 21, 1745.
Pretoria, convention of	Aug. 3, 1881.
Prohibited projectiles, declaration of St Petersburg	Dec. 11, 1868.

Protestant succession to crown of England, treaty of guarantee for	Jan. 29, 1713.
Prussia, extradition convention	March 3, 1864.
Do. extradition ordinance	July 26, 1867.
Prussia, treaty of union, concert, and subsidy with Great Britain	March 1, 1814.
Prusso-Austrian war, proclamations on both sides justifying	June 17, 1866.
Pultowa, battle of	July 8, 1709.
Pyramids, battle of	July 13-21, 1798.
Pyrenees, battle of	July 28, 1813.
Do. peace of	Nov. 7, 1659.
Quadruple Alliance of London	Aug. 2, 1718.
Do. of Warsaw	Jan. 8, 1745.
Do. of Chaumont	March 1, 1811.
Do. for establishing peace in Iberian Peninsula,	April 22, 1834.
Quebec taken (General Wolfe killed)	Sept. 13, 1759.
Raglan, Lord	1788-1855.
Ramillies, battle of	May 23, 1706.
Rastadt, treaty of	March 6, 1714.
Do. congress of	Dec. 9, 1797.
Ratisbon, treaty of	Aug. 15, 1684.
Reciprocity Treaty, United States and Britain	June 5, 1854.
Red Cross Convention, Geneva	Aug. 22, 1864.
Reichenbach, declaration of	July 27, 1790.
Do. treaty of	June 14, 1813.
Rhine, the alliance of the	Aug. 15, 1658.
Do. navigation, convention on	Aug. 15, 1804.
Do. States, confederation of, treaty for	July 12, 1806.
Richelieu, Cardinal	1585-1642.
Rochelle, Assembly of Reformed Churches of France and Switzerland	May 10, 1621.
Rome and Spain, reconciliation of courts of	July 1848.
Rouher, Eugene	1814-1884.
Roumania, conference at Paris for organisation of	May 22, Aug. 19, 1858.
Do. recognised independent and a kingdom	1880.
Rovigo, convention of (Austria and Pope)	Aug. 15, 1848.
Rupert, Prince	1619-1682.
Russia, alliance against	March 24, 1812.
Ryswick, peace of	Sept. 20, 1697.
Saarbruck, battle of	Aug. 2 and 6, 1870.
Salamanca, battle of	July 22, 1812.
Sand River Convention	Jan. 17, 1852.

Sandwich Islands, independence of	Nov. 28, 1843.
San Juan Boundary award, N.W. America	Oct. 21, 1872.
San Stefano, treaty of, close of Russo-Turkish war	Feb. 19-March 2, 1878.
Saragossa, treaty of (Spain and Portugal)	April 22, 1529.
Saratoga, battle of (America)	Oct. 17, 1777.
Sardinia and Austria, declaration of war	April 28, 1859.
Sarrebruck, convention of	Oct. 23, 1829.
Savoy and Nice, treaty for cession of, to France	March 24, 1860.
Saxe, Marshal	1696-1750.
Saxony, treaty of peace between, and Prussia	Oct. 21, 1866.
Scheldt, navigation of, treaty	July 16, 1863.
Schleswig-Holstein, war regarding, between Prussia and Denmark	1849-50 and 1864.
Do. question, conference of London regarding	April 24-June 25, 1864.
Do. war, outbreak of hostilities	Jan. 21, 1864.
Schleswig and Holstein incorporated by decree with Prussia	Jan. 24, 1867.
Schönbrunn, peace of	Oct. 14, 1809.
Scobelev, General	1843-1882.
Scotland and England, boundary between, settled	1222.
Sea, empire of, manifesto of Parliament of England claiming	July 31, 1652.
Sea, a free sea claimed by States-General of Holland	Aug. 2, 1652.
Sebastian, Count	1776-1851.
Sebastopol, fall of	Sept. 9, 1855.
Sedan, battle of	Aug. 31 and Sept. 1, 1870.
Sedgemoor, battle of	July 6, 1685.
Senova, battle of	Jan. 9-10, 1878.
Serfdom entirely abolished in Russia	March 3, 1861.
Servia, pacification of, Kanlidja protocol	Sept. 4, 1862.
Do. recognised a kingdom	1880.
Servian war begins	July 1, 1876.
Do. peace between Turkey and Servia	March 1, 1877.
Seven Years' War begun	May 1756.
Seville, peace of	Nov. 9, 1729.
Ships, belligerent, British instructions regarding	May 11, 1865.
Siam, extradition treaty	May 6, 1869.
Silistria taken by Russians	June 1774.
Do. Turks defeat Russians	Sept. 26, 1809.
Do. surrender of	June 30, 1829.
Do. Turks defeat Russians	June 13-15, 1854.
Sinope, Turkish fleet destroyed	Nov. 30, 1853.
Siöröd, peace of	1613.
Sistova, peace of (Austria and Porte, Great Britain, Prussia, and Holland)	Aug. 4, 1791.
Slave-trade abolished by Austria	1782.
Do. do. by French Convention	1794.
Do. do. by British Parliament	March 25, 1807.

Slave-trade abolished by United States	1808.
Do. do. by Spain (by treaty)	1817.
Do. do. by Netherlands (by treaty)	1818.
Do. do. by Brazil (by treaty)	1826.
Do. do. on East Coast of Africa (treaty)	1872.
Do. do. on Gold Coast	1874.
Do. do. in Egypt (by convention)	1879.
Do. treaty between the five great Powers for suppression of	Dec. 20, 1841.
Slavery abolished in British possessions	Aug. 28, 1833.
Do. do. French colonies	April 19, 1848.
Do. do. Dutch West Indies	July 1, 1863.
Do. proclamation of abolition of, in United States	Dec. 18, 1865.
Do. decree gradually abolishing, in Brazil	Sept. 27, 1871.
Do. gradual abolition in Portuguese colonies	Feb. 1876.
Do. do. of, in Cuba promulgated	Feb. 18, 1880.
Do. to end in Egypt	July 31, 1881.
Smalcald, league of	Dec. 31, 1529.
Smolensko, battle of	Aug. 15-20, 1812.
Sobieski, Prince	1629-1696.
Solferino, battle of	June 24, 1859.
Soult, Marshal	1769-1851.
Sound dues, treaty for redemption of	March 14, 1857.
South American Republics recognised by United States	March 8, 1822.
Do. do. by Mr Canning for Great Britain	Jan. 1, 1825.
Spain and Rome, reconciliation of the courts of	July 1848.
Spain, extradition treaty	June 4, 1878.
Spain, pacification treaty of	April 22, 1834.
Spanish "family compact"	Aug. 28, 1814.
Spanish succession, decree regarding	Oct. 25, 1834.
St Cloud, decree of	Sept. 12, 1810.
Do. convention of, between Allied and French armies,	July 3, 1815.
St Germain, treaty of (navigation)	1632 and 1676-77.
St Ildefonso alliance	Aug. 19, 1796.
Stamford Bridge, battle of	Sept. 25, 1066.
Standard, battle of the (Northallerton)	Aug. 22, 1136.
Stettin, peace of	Dec. 13, 1570.
Stockholm, treaty of, between Gustavus Adolphus and the Grand Duke of Muscovy	Feb. 20, 1618.
Do. peace of	Nov. 20, 1719.
Do. treaty of	March 24, 1724.
Do. do.	March 3, 1813.
Do. do. (Sweden and Allies)	Nov. 21, 1856.
Stratford de Redcliffe, Lord	1788-1880.
Strathnairn, Lord	1803-

Suez Canal shares, agreement between Britain and Egypt to buy	Nov. 1, 1875.
Sujah ul Dowlah and East India Company, treaty between	Aug. 13, 1765.
Sulhingen, convention of	June 3, 1803.
Suncion, treaty of	July 15, 1852.
Suwarrow, General	1729-1800.
Sweden and Norway, treaty regarding integrity of	Nov. 21, 1855.
Do. extradition treaty	June 26, 1873.
Switzerland, perpetual neutrality and independence of, declared by Allied Powers	Nov. 20, 1815.
Do. extradition treaty	March 31, 1874.
Do. do. Dec. 8, 1879, and	Nov. 26, 1880.
Syria, treaty of London regarding	July 15, 1840.
Do. firman regarding Christians in	June 20, 1841.
Do. conference in Paris relative to establishment of tranquillity in	Aug. 3, 1860.
Tafna, treaty of, ceding Algiers to France	May 10, 1837.
Talavera, battle of	July 27-28, 1809.
Talleyrand, Prince	1754-1838.
Teheran, treaty of (Great Britain and Persia)	Nov. 25, 1814.
Do. do.	April 14, 1857.
Telegraph convention, international, St Petersburg	July 10-22, 1875.
Tel-el-Kebir, battle of	Sept. 10, 1882.
Temeswar, truce of	Sept. 7, 1664.
Teschin, peace of	May 13, 1779.
Teusin, peace of	May 18, 1595.
Thermopylæ, battle of (Greeks defeat Turks)	July 13, 1822.
Thiers, M.	1797-1877.
Thouvenel, Edward	1818-1866.
Tiberias, battle of (Saladin defeats Crusaders)	July 3 and 4, 1187.
Tien-tsin, treaty of (Britain and China)	June 26, 1858.
Tigris, navigation of, by British steamers, convention	April 2, 1846.
Tilly, Count	1559-1632.
Tilsit, peace of, between France, Russia, and Prussia	July 7, 1807.
Tirlemont, battle of	July 18, 1705.
Totleben, General	1818-
Tolentino, peace of	Feb. 19, 1797.
Töplitz, alliance of	Sept. 9, 1813.
Tours, battle of (Charles Martel defeats the Saracens)	Oct. 10, 732.
Trafalgar, battle of	Oct. 21, 1805.
Traianon, decree of	Aug. 5, 1810.
Tripartite Treaty of Paris, guaranteeing integrity of Turkish empire	April 15, 1856.
Triple Alliance, the (England, Holland and Sweden)	Jan. 23, 1668.
Do. treaty of (Germany, Poland, and Republic of Venice against Turks)	Sept. 2, 1684.

Triple Alliance of the Hague, the (France, Great Britain, and the Netherland States) .	Jan. 4, 1717.
Do. of St Petersburg (Germany, Great Britain, and Russia)	Sept. 28, 1795.
Tripoli, protocols regarding jurisdiction in	Feb. 12-27, 1873.
Troppeau, congress of	Oct. 20, 1820.
Troyes, treaty of, ceding French provinces to England	1420.
Tunis, convention regarding jurisdiction and commerce	July 19, 1875.
Turenne, Marshal	1611-1675.
Turin, peace of	Oct. 7, 1696.
Do. treaty of	March 16, 1816.
Do. treaty (cession of Savoy and Nice to France) .	March 24, 1860.
Turkey, Hatti-Scheriff granting privileges to Christians	Nov. 3, 1839.
„ integrity of, guaranteed by protocol signed at Vienna	April 10, 1854.
„ evacuation of, by Allies, convention relative to	May 13, 1856.
„ convention of, defensive alliance between Great Britain and Turkey	June 4, 1878.
Turkmanchay, peace of	Feb. 22, 1828.
Turks invade Europe, crossing Dardanelles	1357.
Tyrol acquired by Austria	1363.
Ulm, peace of	July 3, 1620.
Do. battle of	Oct. 17-20, 1805.
Ulundi, battle of	July 4, 1879.
United States of America, declaration of independence	July 4, 1776.
Do. and Great Britain, treaty of peace	Sept. 3, 1783.
Do. of America, new constitution adopted	Sept. 17, 1787.
Do. proclamation of war against	Oct. 26, 1812.
Do. N.E. boundary, convention with Britain	Sept. 29, 1827.
Do. N.E. boundary, decision by Netherlands	Jan. 10, 1831.
Do. Ashburton boundary treaty	Aug. 9, 1842.
Do. and Canada, delimitation treaty	Aug. 9, 1842.
Do. Oregon treaty, Vancouver's Island and Columbia River	June 15, 1846.
Do. Reciprocity treaty	June 5, 1854.
Do. civil war, outbreak of hostilities	April 13, 1861.
Do. civil war, close of	May 26, 1865.
Do. Fisheries treaty	May 8, 1871.
Do. N.W. boundary award by Germany	Oct. 21, 1872.
Unkiar Skelessi, treaty of (signed at Constantinople) .	1836.
Uruguay River, decree of free navigation of	June 2, 1854.
Utrecht, peace of	April 11, 1713.
Utrecht, Union of	Jan. 22, 1579.
Valençay, treaty of (Napoleon and Ferdinand VII.) .	Nov. 12, 1813.

Valmy, battle of	Sept. 20, 1792.
Varsovie, convention of, for entry of Russian troops into Transylvania	June 10, 1849.
Venetian State interdicted by Paul V.	April 17, 1606.
Venice and Quadrilateral surrendered to Italians	Oct. 11-19, 1866.
Vera Cruz, peace of (France and Mexico)	March 9, 1839.
Verona, battle of	March 28-30, 1799.
Do. congress of	Aug. 25, 1822.
Do. congress of (slave-trade)	Nov. 28, 1822.
Versailles, the Alliance of	May 1, 1756.
Do. peace of (Great Britain, France, and Spain)	Sept. 3, 1783.
Victor, Marshal	1764-1841.
Vienna, battle of (Turks defeated by Sobieski)	Sept. 12, 1683.
Do. alliance of (Germany and Russia)	Aug. 6, 1726.
Do. treaty of	April 30, 1725.
Do. alliance of	March 16, 1731.
Do. peace of	Nov. 18, 1738.
Do. alliance of (Germany and Great Britain)	May 20, 1795.
Do. peace of (Austria and France)	Oct. 14, 1809.
Do. convention of	Sept. 28, 1814.
Do. the Grand Alliance of	March 25, 1815.
Do. congress of	Oct. 1814-June 9, 1815.
Do. peace of (Denmark and Germany)	Oct. 30, 1864.
Do. treaty of (cession of Venetia to Italy)	Oct. 3, 1866.
Villafranca, convention and armistice of	July 8, 1859.
Do. preliminaries of peace of (France, Italy, and Austria)	July 12, 1859.
Vimiera, battle of	Aug. 21, 1808.
Vinegar Hill, battle of (Irish Rebellion)	June 21, 1798.
Vittoria, battle of	June 21, 1813.
Volturno, battle of	Oct. 1, 1860.
Vossem, peace of	Jan. 16, 1673.
Wallace, Sir William	1270-1305.
Warsaw, alliance of	March 31, 1683.
Do. the Quadruple Alliance of	Jan. 8, 1745.
Do. treaty of (Russia and Poland)	Feb. 24, 1768.
Do. taken by Suwarrow	Nov. 4, 1794.
Do. taken by Russians	Sept. 7, 1831.
Do. protocol of, relative to integrity of the Danish monarchy	May 24-June 6, 1851.
Washington, General George	1732-1799.
Washington, convention of, Panama Canal (United States and Great Britain).	April 19, 1850.
Do. treaty of (fisheries)	June 5, 1854.
Do. convention of, mutual settlement of claims	July 17, 1854.
Do. treaty of (Alabama claims)	May 7, 1871.

Waterloo, battle of	June 18, 1815.
Wellesley, Marquis of	1760-1842.
Wellington, Duke of	1769-1852.
West India Company, Dutch, established	1620.
Westminster, the alliance of	Jan. 16, 1756.
Do. peace of	Feb. 19, 1674.
Do. treaty of (Holland)	1716.
Westphalia, treaty of, negotiations begun	1642.
Do. do. do. ended	1648.
Do. kingdom of, formation of	Aug. 1807.
Do. do. abolished	1813.
William the Conqueror	1027-1087.
William the Silent	1533-1584.
William, Prince of Orange, III. of England	1650-1702.
Do. do. issues his declaration "for religion and liberty"	Oct. 1688.
William I., Emperor of Germany	1797-
Wilna, treaty of	1561.
Windischgrätz, Prince	1787-1861.
Wolfe, General	1727-1759.
Worcester, battle of	Sept. 23, 1642.
Do. do.	Sept. 3, 1651.
Worms, diet of	April 4, 1521.
Do. treaty and peace of	Sept. 2, 1743.
Wurtzburg, league of	1610.
Wusterhausen, treaty of	Oct. 12, 1727.
Yedo, treaties of	Aug. 26 and Oct. 9, 1858.
York Town, battle of (Cornwallis surrenders)	Oct. 19, 1781.
Zeeland, annexation to France, by capitulation	Feb. 3, 1795.
Zollverein, German, instituted	1818.
Do. do. treaty	July 8, 1867.
Zonhoven, convention of	Nov. 18, 1833.
Zurich, battles of	June 5 and Sept. 25, 1799.
Do. convention of	May 20, 1815.
Do. peace of (Austria and France and Sardinia)	Aug. 8, 1859.
Do. treaty of (Italian confederation)	Nov. 10, 1859.

No. XVII.

POLITICAL CHANGES IN THE DIFFERENT STATES
OF MODERN EUROPE.

AUSTRIA.

Margraviate of Austria established	796.
Do. declared hereditary Duchy	1156.
Acquired by house of Hapsburg	1278.
Tyrol annexed to	1363.
Raised to Archduchy	1453.
Flanders acquired by marriage	1477.
Archdukes of Austria become Emperors of Germany .	1493.
Spain acquired through marriage	1496.
Bohemia and Hungary united to Austria	1526.
Separation of Spain and Austria	1700.
Flanders annexed to Germany	1713.
Italian provinces acquired	1708-1715.
Galicia acquired on partition of Poland	1772.
Italian provinces lost	1799.
Francis II., Emperor of Germany, declared hereditary Emperor of Austria	Aug. 11, 1804.
Napoleonic occupation	1805-1809.
Germanic Confederation dissolved, and Emperor abdi- cates formally	Aug. 6, 1806.
Italian provinces restored by treaty of Vienna . . .	Feb. 25, 1815.
Lombardo-Venetian kingdom established	April 7, 1815.
Hungarian Revolution, Austria saved by Russia . .	1848.
Occupies Danubian principalities	1854.
Concordat with Pope	Aug. 18, 1855.
Evacuates Danubian principalities	1857.
Italian war, according to French Emperor "to expel Austrians from Italy"	May 3, 1859.
Seven Weeks' War with Prussia and Italy	June and July 1866.
Italian provinces entirely lost with cession of Venetia to Italy	Oct. 3, 1866.
Local autonomy granted to Hungary	Feb. 7, 1857.
Emperor and Empress crowned King and Queen of Hungary at Buda	June 8, 1867.
Czech, Croat, Slavonian, Serb, Rouman, and Russianian provinces absorbed in Empire, and protests against	May and July 1867.
Concordat with Rome suspended	July 30, 1870.

Occupation under Berlin Treaty of Bosnia and Herzegovina	July 20, 1878.
Insurrection in Bosnia and Herzegovina	Oct. and Nov. 1878.

ENGLAND.

Brought under one sovereign	871.
Invaded by Normans	1066.
Conquest of Ireland	1171-1172.
Normandy lost	1204.
Wales subdued and united to England	1283.
Invasion of France	1346.
French crown gained	1420.
France lost	1431.
Title of Kings of Ireland confirmed to English sovereigns	1543.
Spanish Armada repulsed	July 1588.
Union of Scotch and English crowns	March 24, 1603.
King styled "King of Great Britain"	Oct. 24, 1604.
Civil War begins	Oct. 23, 1642.
Commonwealth, with Cromwell Protector	Dec. 16, 1653.
Restoration of monarchy	May 29, 1660.
Union of kingdoms of Scotland and England	May 1, 1707.
Canada gained from France	Feb. 10, 1763.
America lost	Nov. 30, 1782.
Union of Great Britain with Ireland	Jan. 1, 1801.
India transferred from Company to Crown	Aug 2, 1858.
Ionian Islands ceded to Greece	June 1, 1864.
Suez Canal shares bought from Khedive	Nov. 1, 1875.
Queen proclaimed Empress of India	May 1, 1876.
Indian troops ordered to Europe	April 17, 1878.
Transvaal annexed	April 12, 1877.
Do. retrocession of	Aug. 8, 1881.

BRITISH COLONIES AND DEPENDENCIES.

INDIA.

Sea passage to India discovered by Vasco da Gama	1497.
First European (Portuguese) settlement at Cochin	1502.
Attempts made to reach India by north-east and north-west passages	1528.
Sir Francis Drake's expedition	1579.
Overland expedition from Levant	1580.
First commercial venture from England	1591.
First charter to India Company of Merchants, London	1600.
Dutch first visit India	1601.

Dutch East India Company established	1602.
Tranquebar made Danish settlement	1619.
First factories established at Surat	1612.
Madras founded	1640.
Bombay ceded to England by Portugal as part of the Infanta Catherine's dowry on her marriage to Charles II.	1662.
French East India Company established	1664.
Pondicherry settled by French	1668.
Calcutta purchased by English	1698.
War of Supremacy in India between England and France	1746-1749.
Capture of Calcutta by Surajah Dowla and Black Hole incident	June 20, 1756.
Clive retakes Calcutta	Jan. 2, 1757.
Conquest of Patna	Nov. 6, 1763.
Virtual sovereignty of Bengal, Bahar, and Orissa secured by Clive	Aug. 12, 1765.
Pondicherry taken from French	Oct. 11, 1778.
Hyder Ali	1728-June 2, 1782.
Pondicherry restored to French	1783.
Do. again captured by British	1793.
Mysore annexed	June 22, 1799.
Seringapatam besieged	1791, 1792, and 1799.
Tippoo Sahib	1749-1799.
Carnatic conquered	1800.
Pondicherry restored to French	1801.
Furruckabad ceded to Britain	June 4, 1802.
Pondicherry retaken	Dec. 1803.
Mahratta war	1803-1805.
Pondicherry finally restored to French	1815.
Pindaree war	1817-1818.
Burmese war	1824-1826.
Rangoon taken	May 5, 1824.
Malacca ceded	1824.
Singapore purchased	1824.
Assam acquired	1825-1826.
Burmah, part of, ceded after war, by treaty . .	Feb. 24, 1826.
Act opening trade to India and China	Aug. 28, 1833.
Coorg annexed	April 10, 1834.
Slavery abolished	Aug. 1, 1838.
First Afghan war begins	Oct. 1, 1838.
Do. ends by evacuation	Oct. 12, 1842.
Scinde war	1843.
Annexation of Scinde	June 1843.
Gwalior taken	Dec. 29, 1843.
Sikh war	1845-1849.

Danish possessions in India purchased	1845.
Treaty of Lahore	March 9, 1846.
Formal annexation of Punjab to British dominions	March 29, 1849.
Second Burmese war	1851-1853.
Annexation of Pegu	Dec. 20, 1852.
Nagpoor annexed	Dec. 11, 1853.
Oude annexed	Feb. 7, 1855.
Sepoy mutiny	March 1857-1858.
Government of East India Company ceases	Sept. 1, 1858.
Queen proclaimed throughout India	Nov. 1, 1858.
Punjab made a distinct presidency	Jan. 1, 1859.
Legislative Council for India established, and meets for first time	Jan. 18, 1862.
Meeting of Earl Mayo (Viceroy) and Shere Ali, Afghan Ameer	March 27, 1869.
Deposition of Guicowar of Baroda	April 23, 1875.
Prince of Wales visits India	1875-1876.
Queen proclaimed Empress of India in London	May, 1, 1876.
Do. do. at Delhi	Jan. 1, 1877.
Beloochistan occupied (Quettah)	1877.
Indian troops brought to Europe	April 1878.
Second Afghan war	1878-1879.
Afghanistan evacuated	1880.

AFRICA, SOUTH.

Bartholomew de Diaz, Portuguese commander, landed in Algoa Bay	Sept. 14, 1486.
By Saldanha Bay proclamation, the Cape taken pos- session of in name of Great Britain	1620.
Cape Town, Table Bay, founded by Dutch East India Company	1652.
Regular Dutch colonies established	1671-1788.
Taken from Dutch by English under Admiral Elphin- stone and General Clark	Sept. 16, 1795.
Restored to Holland at peace of Amiens	March 25, 1802.
Retaken by Sir David Baird	Jan. 9, 1806.
Finally ceded to England	Aug. 13, 1814.
First Kaffir war	1834.
Boer population begin to "trek" into the wilderness	1836.
Second Kaffir war	1836.
Natal annexed to Cape Colony	1844.
Third Kaffir war	1850.
Transvaal declared its independence	Jan. 17, 1852.
Orange Free State established	March 1854.
Natal constituted separate colony	1856.
Crimean German Legion settled in colony	1856.

576 POLITICAL CHANGES IN MODERN EUROPE.

Basutoland annexed to Cape	1871.
Griqualand constituted a colony	Oct. 27, 1871.
Confederation of South African colonies, proposed by Earl Carnarvon	1875.
Fingland, Idutywa, and Noman's Land annexed to Cape	June 12, 1876.
Transvaal Republic annexed	April 12, 1877.
Third Kaffir war	1877-1878.
Walwich Bay proclaimed British territory	March 12, 1878.
Zulu war	Jan. 11-Sept. 1, 1879.
Griqualand West incorporated with Cape	Oct. 15, 1880.
Rising in Transvaal	Dec. 1880.
Retrocession of Transvaal by Convention of Pretoria	March 21, 1881.

BAHAMAS.

Discovered by Columbus	1492.
Given by Charles II. to English Company	1670.
In French and Spanish hands	1703-1718.
Under English administration	1718-1781.
Surrendered to Spain	1781.
Annexed by Great Britain under peace of Versailles	1783.

BERMUDAS.

Discovered by Spanish mariner Juan Bermudes	1515.
Granted by James I. to Virginia Company	1609.
Sold by Virginia Company to London Plantation Company	1620.
Crown colony, London Company's charter being an- nulled	1684.

BRITISH GUIANA.

Discovered by Columbus	1498.
Settled partly by Dutch West India Company	1580.
Explored by Sir Walter Raleigh	1596-1617.
French settlements formed	1626-1643.
Ceded to Holland	1802.
Retaken by Great Britain	1803.
Finally annexed by Great Britain	1814.

BRITISH HONDURAS.

Discovered by Columbus	1502.
Conquered by Spaniards	1523.
Settled by English from Jamaica	1607.
Spaniards finally expelled	1783.
British colony, subordinate to Jamaica	1783-1862.
Crown colony	1862.

CANADA, DOMINION OF.

First permanent settlement by French	1608.
Taken by English	1629.
Restored to French	1632.
Conquered by English	1759.
Confirmed to Great Britain by Treaty of Paris	Feb. 10, 1763.
United States troops invade Canada	Nov. 1775.
Do. expelled by General Carleton	Mar. 1776.
Divided by Act of Parliament into Upper and Lower Canada	1791.
American invasion during Second American War	1812-1814.
The Papineau Rebellion	1837-1838.
Earl Durham, Governor-General, suppresses rebellion and foreshadows federation	1838.
Upper and Lower Canada united	Feb. 10, 1840.
Prince of Wales visits Canada	1860.
Act for union of Canada, Nova Scotia, and New Brunswick, under name of Dominion of Canada, passed	March 20, 1867.
Fenian raid into Canada	May 24, 1868.
Hudson's Bay territories purchased	Nov. 1869.
Manitoba (Rupert's Land) admitted into Dominion	July 15, 1870.
Red River Expedition	July 25, 1870.
British Columbia united to Dominion	July 20, 1871.
Prince Edward Island incorporated	July 1, 1873.
Reciprocity Treaty with United States	Feb. 4, 1875.
North-West territories created a separate province	Oct. 7, 1876.
Canadian and United States Fishery Commission meet at Halifax	Nov. 24, 1877.
All British America, except Newfoundland, annexed to Dominion by Order in Council	Sept. 1, 1880.

CEYLON.

Visited by Romans	41.
First Portuguese settlements established	1505.
Dutch invaded island and captured Colombo	1603.
Peace between Dutch and Portuguese	1604.
First British trading communications	1713.
Dutch settlements captured by British	1782.
Restored to Dutch	1783.
Again taken by British and annexed to Presidency of Madras	1795-1796.
Finally ceded to Britain at Peace of Amiens, and constituted a separate British colony	1802.
War with native kings in interior, and complete sovereignty of island assumed by Britain	1815.

CYPRUS.

On division of Roman Empire, remained with Byzantium down to	1191.
Taken by Richard I. of England	1191.
Sold by Richard to Templars	1192
And afterwards to Lusignan, in whose family it remained till	1489.
Taken and held by Venice till	1571.
When captured by Turks, who held it till ceded to England by Salisbury Secret Treaty	1879.

FALKLAND ISLANDS.

Discovered by Davis	1592.
Taken possession of by France	1763.
Spaniards expelled French, who held them till	1771.
Handed over to Britain, who held them nominally till	1820.
Settlement established by republic of Buenos Ayres	1820-1831.
Settlement destroyed by Americans	1831.
Finally taken possession of by Great Britain, and governor appointed	1833.

FIJI.

Thakombau, most powerful chief in islands (255 in number), offers sovereignty to Great Britain	1859.
European settlements made	1860.
Sovereignty declined by Britain	1862
Mixed native and European government set up, with Thakombau as king	1871.
Agitation in Australia and England for annexation	1869-1873.
Unconditional cession to Great Britain	Oct. 25, 1874.
Charter erecting islands into separate colony, granted and proclaimed	Sept. 1, 1875.

GIBRALTAR.

Captured by Saracens under Tarik, hence its name derived from Gibel-el-Tarik	711.
Taken from Moors	1309.
Restored to Moors	1333.
Henry IV. of Castille finally gains possession of rock	1462.
Captured by British under Admiral Byng and Sir George Rooke	July 24, 1704.
Besieged by French and Spaniards	Oct. 11, 1704.
Siege raised	March 10, 1705.
Ceded to England by treaty of Utrecht	April 11, 1713.
Abortive attacks by Spaniards	1720-1727.
Great siege by French and Spaniards, began	July 16, 1779.
Do. do. ceased	Feb. 5, 1783.

GOLD COAST.

First settlement by Royal African Co. of London	1672.
Forts transferred to Crown, and company dissolved	1821.
First Ashanti war, and death of governor	1824.
Close of war, and tripartite treaty between English, Fantia, and Ashantis	1831.
Government transferred from Crown to local and London merchants	1831-1843.
Government resumed by Crown	1843.
Danish forts purchased	1850.
Second Ashanti war	1863.
Settlement of dispute with Dutch colonists by partition of coast	Jan. 1, 1868.
Transfer of Dutch settlements to Great Britain by Convention of Hague	April 6, 1872.
Third Ashanti war	Dec. 9, 1872.
Treaty of Fommanah, by which king of Ashanti renounces all claim on protectorate	Feb. 13, 1873.
Constituted a colony by charter under Great Seal	July 24, 1874.

HELIGOLAND.

Taken from Danes by British	Sept. 5, 1807.
Formally ceded to Great Britain by treaty of Kiel	Jan. 14, 1814.
Ancient Frisian constitution abolished	1864.
Representative government	1864-1868.
Legislative and executive authority centred in hands of governor	Feb. 29, 1868.

HONG-KONG.

Captured by Captain Elliott	Aug. 23, 1839.
Ceded to Great Britain	Jan. 20, 1841.
Cession confirmed by treaty of Nankin	Aug. 1842.
Erected into colony by charter	April 5, 1843.
Peninsula of Kow-loon on mainland added to colony by Lord Elgin's treaty	1861.

JAMAICA.

Discovered by Columbus	May 3, 1494.
Held by Spain	1494-1655.
Cromwell sends expedition under Penn and Venables, which captures island	May 3, 1655.
Regular civil government established	1670.
Title of Great Britain to island recognised by treaty of Madrid	July 18, 1670.
Rising of Maroons	June 1795-March 1796.
Slave-trade abolished	May 1, 1807.

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Insurrection of negro slaves	Dec. 22, 1831.
Emancipation of slaves	Aug. 1, 1834.
Negro insurrection	Oct. 1865.
Legislative Assembly dissolved, after existence of 200 years	Jan. 17, 1866.
New constitution promulgated	Oct. 16, 1866.

LABUAN.

Ceded to Great Britain by Sultan of Borneo	1846.
Erected a Crown colony	1848.

LEEWARD ISLANDS.

Discovered by Columbus	1493.
First settled by English	1628-1666.
Captured or occupied by French at various dates between	1664-1668—1771-1783.
Finally acknowledged English by treaty of Versailles	1783.
Governed by general legislature	1798.
Separate government of islands	1798-1871.
Federation of islands, and constitution of into single colony by Act of Imperial Parliament	Aug. 21, 1871.

MALTA.

Settled by the Phœnicians	B.C. 1519.
Conquest by Rome	B.C. 259.
Taken by the Vandals	A.D. 534.
Captured by the Arabs	870.
Saracens expelled by Count Rodger the Norman	1090.
An appanage of House of Anjou	1190.
Do. of House of Arragon	1266.
Charles V. grants it to the Knights Hospitallers	1530.
Turks unsuccessfully besiege the island	1551-1563.
Captured by Napoleon <i>en route</i> to Egypt	July 12, 1798.
Maltese rose against French and besieged them in towns for two years	1798-1800.
Surrendered to British under Pigot	Sept 5, 1800.
Finally annexed to Great Britain by Treaty of Paris	1814.

MAURITIUS.

Discovered by Portuguese	1507.
Settled by Dutch	1598.
Abandoned by Dutch	1710.
Taken possession of by French East India Company	1715.
Made a French crown colony	1767.
Captured by British Expedition	Dec. 2, 1810.
Possession by Britain confirmed by Treaty of Paris, and made a crown colony, with Seychelles islands,	

POLITICAL CHANGES IN MODERN EUROPE. 581

Rodrigues, and other islands in Indian Ocean as dependencies 1814.

NEWFOUNDLAND.

Discovered by Sebastian Cabot	June 24, 1497.
Formally taken possession of by Sir Humphrey Gilbert	1583.
French established station at Placentia	1620.
French, Spanish, and Portuguese settlements for fishing purposes	1623.
Lord Baltimore colonises south-east of island	1623.
Disputed sovereignty between France and England down to	1713.
Sovereignty conceded to Great Britain by Peace of Utrecht	April 11, 1713.
Confirmed by Treaty of Paris	1814.
Responsible government conceded to colony	1855.

NEW SOUTH WALES.

Discovered by Spaniards	1609.
Explored by Captain Cook	1770.
First settlement formed by convicts	Jan. 20, 1788.
New constitution granted by Act of Imperial Parliament	1855.

NEW ZEALAND.

Discovered by Dutch navigator Tasman	1642.
Explored by Captain Cook	1769.
Right of Great Britain to, recognised by Treaty of Paris	1814.
Resident administrator subordinate to New South Wales	1833.
Native chiefs cede sovereignty to British Crown by Treaty of Waitangi	Feb. 5, 1840.
Erected into British colony	April 1841.
Provinces founded — Wellington, 1839; Auckland, 1840; Nelson, 1841; Otago, 1848; and Canterbury, 1850.	
Charter with constitution granted	Dec. 29, 1847.
Charter modified	1857.
First Maori war	1860-1861.
Second do.	May 4, 1863-July 2, 1866.
Final submission of Maori king	Feb. 1875.

QUEENSLAND.

Separated from New South Wales and made a distinct colony	1859.
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ST HELENA.

Discovered by Portuguese navigator Castella	May 21, 1501.
Taken possession of by Dutch, and held by them till	1600.
English East India Company formed settlement	1651.
Sovereignty disputed by Dutch and English till	1673.
When Charles II. handed it to East India Company, who held it till	1815.
Napoleon, a prisoner of British Government Oct. 10, 1815 to May 5, 1821.	
Napoleon's remains removed to Paris	1840.
A British colony, administered by Governor and Executive Council, from	1833.

SOUTH AUSTRALIA.

Explored by Captain Parker	1830.
Occupied by Captain Hindmarsh	Dec. 26, 1836.
Colonised by an English Company	1836-1839.
Constitution granted by Imperial Parliament	Oct. 24, 1856.

STRAITS SETTLEMENTS.

Malacca secured by Portuguese	1511.
Dutch drove out Portuguese	1641.
Captured by English from Dutch	1795.
Restored to Dutch	1818.
Exchanged by Holland to Great Britain for Bencoolen, Sumatra	March, 17, 1824.
Penang ceded to England by Rajah of Kedah	1785.
Province of Wellesley added to Penang	1798.
Singapore taken by English in virtue of treaty with Malay princes	1823.
Malacca, Penang, and Singapore, made a separate dependency, under Governor-General of India	1853.
Separated from India and constituted an independent settlement by Act of Imperial Parliament	Aug. 10, 1866.
Perak annexed to Britain	1874.

TASMANIA.

Discovered by Tasman	Nov. 24, 1642.
Explored by Cook and Flinders	1777-1779.
Taken possession of by Lieutenant Bower for Great Britain	1803.
Erected a British colony	Feb. 16, 1804.

TRINIDAD.

Discovered by Columbus	July 31, 1496.
First Spanish governor appointed	1532.

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Captured by Sir Walter Raleigh	1595.
Taken from English by Spaniards	1676.
Foreigners of all nations invited to settle in the island .	1783.
Taken by English, under Sir Ralph Abercrombie .	Feb. 18, 1797.
Possession confirmed by peace of Amiens, and erected into British colony	1802.

VICTORIA.

Visited by Bass in	1798.
And by Flinders in	1802.
First colonial venture by Henty	1832.
Launceston associates encamp on site of Melbourne .	1835.
Colony surveyed, and sites of towns determined by Sir R. Bourke, governor of New South Wales . .	1837.
Colony named Victoria	1839.
Province declared independent of New South Wales, and gold discovered	1851.
Representative constitution granted	1855.
Federation of Australian colonies first proposed by Mr Gavan Duffy	1857.
Federation convention	Dec. 1883.

WEST AFRICAN SETTLEMENTS.

Sierra Leone ceded to Britain by native chiefs . . .	1787.
The territory granted to a company	1800.
Restored as crown colony	1807.
Gambia Company receive patent from Queen Elizabeth	1588.
A trade settlement down to	1843.
Under charter, Sierra Leone and Gambia united as a distinct colony and settlement	Dec. 17, 1874.

WESTERN AUSTRALIA.

Swan River settlement projected by Col. Peel . . .	1828.
Colony founded under regulations from Colonial Office	1859.

WINDWARD ISLANDS.

Barbadoes.

First occupied by English merchants in 1625, and has
never changed hands.

St Vincent.

Discovered by Columbus	Jan. 22, 1498.
Held by Caribs till	1627.
Alternately by English and French till	1740.
Declared neutral by treaty of Aix-la-Chapelle . .	1748.

Captured by Gen. Monckton	1762
Ceded by treaty of Paris to Britain	1763
Surrendered to French	1779
Restored to Great Britain by treaty of Versailles	1783
Carib insurrection with French assistance	1795-1796
Caribs deported to Honduras	1797

Grenada.

Discovered by Columbus	1498
Settled by French company	1650-1674
Annexed to crown of France	1674
Ceded to Britain by treaty of Paris	Feb. 10, 1763
Retaken by French	1779
Restored to Britain by the treaty of Versailles, and made a crown colony	1783

Tobago.

Discovered by Columbus	1498
British flag planted in island	1580
Settled by Dutch	1632
Dutch expelled by Spaniards	1635
A second Dutch colony	1634
French expel the Dutch	1677
Island acquired by company of London merchants	1681
Declared neutral by treaty of Aix-la-Chapelle	1748
Ceded to England by treaty of Paris	1763
Captured by French	1781
Surrendered by treaty to French crown	1783
Captured by British force	1793
Restored to France by treaty of	1802
Reconquered by Britain	1803
Finally ceded to Britain by treaty of Paris, and erected into British colony	1814

St Lucia.

Held by Caribs till	1635
France claims sovereignty	1642
Taken by English	1663
Ceded to France by peace of Breda	1667
Alternately in French and English hands till treaty of Aix-la-Chapelle, when declared neutral	1748
Captured by Rodney in	1762
Restored to France by treaty of Paris	1763
Recaptured by Rodney	1782
Once more restored to France by treaty of Versailles	1783
Recaptured by British force under Sir Ralph Aber- crombie	1796

Restored to France by peace of Amiens	1802.
Recaptured by British under General Greenfield, and erected a British colony	June 22, 1803.
St Vincent, Barbadoes, Grenada, and Tobago united in one colonial government	1833.
St Lucia included in the general government, under title of Windward Islands	1838.

FRANCE.

Settled by Franks	418.
Invasions of Lombards	584.
Invasion of Saracens	720.
Charlemagne crowned Emperor of West France	Dec. 25, 800.
Norman invasion	876.
Crown seized by Hugh Capet	987.
Union of France and Navarre	1314.
English Invasion	1346.
Henry V. of England acknowledged heir to throne	1420.
Henry VI. crowned at Paris	1422.
English defeated by Joan of Arc	1429.
England lost all possessions in France	1434-1450
Interview of Field of Cloth-of-Gold	1520.
Brittany annexed to France	1532.
House of Bourbon succeed to throne	1589.
Civil Wars of the Fronde	1648.
Seven Years' War begun	1756.
French Revolution commences	July 14, 1789.
First sitting of national convention	Sept. 21, 1792.
Louis XVI. executed	Jan. 21, 1793.
The first Republic	1792-1795.
The Directory	1795-1799.
The Consulate	1799-1804.
Napoleon made first consul	1802.
First Empire established by Senate, and Napoleon pro- claimed Emperor	May 18, 1804.
Napoleon crowned King of Italy	May 26, 1805.
Charles IV. of Spain abdicates in favour of Napoleon	May 5, 1808.
Holland united to France	July 9, 1810.
Napoleon renounces thrones of France and Italy	April 5, 1814.
Bourbon dynasty restored, Louis XVIII.	May 3, 1814.
Napoleon's reign of 100 days	March 20, 1815.
Do. abdicates after Waterloo in favour of his son	June 22, 1815.
Do. banished to St Helena	Oct. 15, 1815, and dies May 5, 1821.
Algiers taken	July 5, 1830.
Bourbons reign	1814-July 30, 1830.
House of Orleans (Louis Philippe)	Aug. 9, 1830; abdicates, Feb. 24, 1848.

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Second Republic	Feb. 26, 1848-Dec. 2, 1852
Second Empire	Dec. 2, 1852
War declared against Russia	March 27, 1854
War declared against Austria	May 12, 1859
Free trade policy with England	Jan. 5, 1860
Savoy and Nice annexed	March 24, 1860
Mexican expedition	Oct. 31, 1861
Cochin China expedition	March 28, 1862
Annam expedition	June 3, 1862
Treaty with Madagascar	Sept. 12, 1862
Venetia ceded to France by Austria	July 4, 1866
Venetia ceded to Italy	Nov. 4, 1866
War declared against Prussia	July 17, 1870
Sedan, battle of, and capture of Emperor	Sept. 1 and 2, 1870
Third Republic proclaimed	Sept. 4, 1870
Napoleon III., death of	Jan. 9, 1873
Napoleon IV. (Prince Imperial) killed in Zululand	June 2, 1879
Joint-Control in Egypt with Great Britain	May 5, 1879
Do. do. abolished	July 1882
Tunis expedition	March and April 1881

HOLLAND.

United to Hainault	1299
Do. Brabant	1416
Annexed to Burgundy	1436
Do. Austria	1477
Do. do. and to Spain	1516
Independence declared	Sept. 29, 1560
Independence recognised	March 30, 1609
A republic recognised by Europe	1648
A principality	1672
Henisius's administration	1702
Annexed to France	1702-1747
A principality	1747-1795
United with Belgium, as Batavian Republic	1795-1806
Erected into kingdom, under Louis Bonaparte	1806-1810
United to France	1810-1813
Erected into Kingdom of Netherlands	1813-1831
Separation from Belgium	July 12, 1831

ITALY.

Era of the kings	B.C. 735-510
Republic	B.C. 510-531
Empire	B.C. 27-395 A.D.
Western Empire	A.D. 395-476
Odoacer establishes kingdom of Italy	476-489

Overrun by Ostrogoths	489-491.
Ostrogoths expelled	522.
Invasion of Lombards	568.
Venice first governed by Doge	697.
Ravenna given to Pope	754.
Charlemagne invades Italy, and crowned Emperor of West by Leo XIII.	800.
Invasion of Saracens	842.
Normans expel Saracens	1016.
Hildebrand and Matilda, Countess of Tuscany, aspire to universal sovereignty	1073.
Rise of Lombard cities	1120.
Wars of Guelfs and Ghibelines begin	1161.
Lombard League established	1167.
Frederick Barbarossa's wars	1154-1175.
Peace of Constance	1183.
Rise of Medici at Florence	1251.
The Visconti rule at Milan	1277.
Sicilian Vespers—expulsion of French from Sicily	March 30, 1282.
Pope fixes residence at Avignon, France	1309.
Genoa first governed by Doge	1339.
Pope returns to Rome	1377.
League of Cambray against Venice	1509.
Parma and Placentia made Duchy	1545.
War of Mantuan Succession	1627-1631.
War of Spanish Succession	1701.
Is divided at Peace of Utrecht	April 11, 1713.
Duke of Savoy becomes King of Sardinia	1720.
Overrun by French	1796.
Cisalpine Republic formed	Oct. 17, 1797.
Cisalpine becomes Italian Republic	Jan. 1802.
A kingdom, with Napoleon as king	May 26, 1805.
Kingdom broken up on fall of Napoleon	1814.
Lombardo-Venetian Kingdom under Austria	April 7, 1815.
Piedmont and Genoa added to Kingdom of Sardinia	Dec. 1814.
Italian regeneration espoused by King of Sardinia	1847.
Lombardy ceded to Sardinia	1859.
Parma, Modena, Romagna, and Tuscany annexed to Sardinia	1860.
Garibaldi and Victor Emmanuel conquer and annex the Two Sicilies	1860.
Italian Parliament decrees Victor Emmanuel King of Italy	March 14, 1861.
Venetia ceded to Italy	Nov. 4, 1866.
Italy recognised as one of the great Powers at conference of London	May 7, 1867.
Rome incorporated with Italy by royal decree	Oct. 9, 1870.

POLAND.

A dukedom	842-992.
Kingdom	992-1572.
Elective kingdom	1573.
Lithuania incorporated	1569.
Conquered by Swedes	1655.
Recovers independence	1660.
John Sobieski, king, defeats the Turks at Vienna	1683.
Civil war and first partition	1772.
Second partition treaty	1793.
Insurrection of Kosciusko	March 1794.
Third partition	1795.
Final partition	1797.
French occupation	1806-1807.
Duchy of Warsaw made Kingdom of Poland under Alexander I. of Russia	April 30, 1815.
Cracow declared free republic	Nov. 27, 1815.
Kingdom of Poland made, by ukase, integral part of Russian Empire	Feb. 26, 1832.
Cracow Republic abolished and annexed to Austria	Nov. 16, 1846.
Kingdom of Poland declared Russian province	May 1847.
All political distinctions of Poland as kingdom abolished by ukase	Dec. 19, 1866.
Designated the Vistula Province, and separate internal government abolished, Polish language prohibited in courts, &c.	Jan. 1868.

PRUSSIA.

Margraviate of Brandenburg	1415.
East Prussia, a dukedom, fief of Poland	1525.
John Sigismund, Elector of Brandenburg and Duke of Prussia	1608.
Poland acknowledges Prussia an independent State	1657.
Frederick III. crowns himself, and is proclaimed King of Prussia	Jan. 18, 1701.
Seven Years' War	1756-1763.
Silesia ceded to Prussia	1763.
Prussia shares in partition of Poland	1772-1793.
French domination	1806-1813.
Prussia, a nation of soldiers—Schaunhorst's scheme of reserves	1813.
King of Prussia elected by German National Assembly hereditary Emperor of the Germans	March 28, 1849.
King declines Imperial Crown	April 29, 1849.
King declares he will reign "By the grace of God"	Oct. 18, 1861.
Seven weeks' war with Austria	June and July 1866.

Germanic Confederation dissolved at diet of Augsburg	Aug. 4, 1866.
North German Confederation formed	Aug. 1866.
Hanover, Nassau, Hesse, and Frankfort annexed	Sept. 20, 1866.
Schleswig and Holstein incorporated with Prussia	Jan. 24, 1867.
Prince Leopold candidate for Spanish throne	July 5, 1870.
War declared by France, for which this was the pretext	July 31, 1870.
King proclaimed Emperor of Germany at Versailles	Jan. 18, 1871.

RUSSIA.

Dukedom of Kief	1149.
Grand Dukedom of Wladimir	1149-1327.
Do. Moscow	1328-1425.
Czardom of Muscovy	1462-1682.
Peter the Great visits Holland and England	1697.
Peter takes title of Emperor	Oct. 22, 1721.
Esthonia, Livonia, and Finland added to Muscovy	1715.
Crimea independent	July 1774.
Poland dismembered	1772-1795.
Crimea annexed by Treaty of Jassy	Jan. 9, 1792.
French invasion, Moscow burned	Sept. 14, 1812.
Kingdom of Poland declared a Russian province	May 1847.
Crimean War—loss of Bessarabia	1854-1856.
Czar protests, in manifesto addressed to the Great Powers of Europe, against recognition of the sovereignty of peoples	Feb. 13, 1860.
Serfdom abolished	March 3, 1863.
Baltic provinces incorporated in empire	Jan. 29, 1876.
War with Turkey	1877-1878.
Retrocession of Bessarabia	July 13, 1878.
Nihilist movement—murder of Emperor	March 13, 1881.

SPAIN.

Carthaginian era	B.C. 360-205.
Roman era	B.C. 205-A.D. 409.
Visigoths, era of	A.D. 409-709.
Saracen era	709-1091.
Moorish epoch	1091-1492.
Union of all Spain in one monarchy	1492-1873.
Republic proclaimed	Feb. 11, 1872.
Monarchy restored	Dec. 30, 1874.

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- VICO, Giovanni Battista, 1668-1744: *De uno universi juris principio.*
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- VOET, Paulus, 1619-1667: *De statutis et eorum concursu.*
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- WELWOOD, William, end of the sixteenth, beginning of the seventeenth century: *De dominio maris.*
- WHEATON, Henry, 1785-1848: *Elements of International Law. History of the Law of Nations in Europe and America, from the earliest times to the Treaty of Washington in 1842.*
- WICQUEFORT, Abraham de, 1598-1682: *L'ambassadeur et ses fonctions.*
- WILDMAN, Richard, 1802-1881: *Institutes of International Law.*
- WOLFF, Christian von, 1679-1754: *Jus gentium methodo scientifica pertractatum.*
- ZACHARIÆ, Karl Salomo, 1769-1843: *Vierzig Bücher vom Staate.*
- ZOUCH, Richard, 1590-1660: *Juris et judicii fœtialis sive juris inter gentes et questionum de eodem explicatio. Solutio questionis veteris ac nove sive de legatis delinquentis judice competente dissertatio.*

No. XIX.

THE FOLLOWING WERE THE EXISTING MEMBERS
AND ASSOCIATES OF THE INSTITUTE OF INTER-
NATIONAL LAW, AT THE DATE OF ITS LAST
MEETING AT MUNICH IN SEPTEMBER 1883.

HONORARY MEMBERS.

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MAMIANI DELLA ROVERE, Count Terenzio, b. 1801.
PHILLIMORE, Sir Robert, b. 1810.

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ASCHEHOUG, Thorkil Halvorsen, b. 1822.
ASSER, Tobie Michel Charles, b. 1838.
BAR, Karl Ludwig von, b. 1836.
BESOBRASOFF, Wladimir, b. 1829.
BROCHER, Charles Antoine, b. 1811.
BRUSA, Emilio, b. 1843.
BULMERINCQ, August, b. 1822.
CALVO, Carlos, b. 1824.
CLUNET, Édouard, b. 1845.
DEMANGEAT, Charles, b. 1820.
ESPERSON, Pietro, b. 1833.
FIELD, David Dudley, b. 1805.
FIORE, Pasquale, b. 1837.
GESSNER, Ludwig, b. 1829.
GOLDSCHMIDT, Levin, b. 1829.
GOOS, Charles, b. 1835.
HALL, William Edward, b. 1835.
HOLLAND, Thomas Erskine, b. 1835.
HOLTENDORFF, Franz Joachim Wilhelm Philipp von, b. 1829.
HORNUNG, Joseph, b. 1822.
KAPOUSTINE, Michael, b. 1828.
LANDA Y ALVAREZ DE CARVALLO, Nicasio de, b. 1831.
LAURENT, François, b. 1810.
LAVELEYE, Emile Louis Victor de, b. 1822.
LORIMER, James, b. 1818.
LUEDER, Karl Christian Johann Friedrich Ludwig, b. 1834.
MANCINI, Pasquale Stanislao, b. 1817.
MARQUARDSEN, Heinrich, b. 1826.
MARTENS, Frédéric de, b. 1843.
MOYNIER, Gustave, b. 1826.
NAUMANN, Christian, b. 1810.
NEUMANN, Leopold, b. 1811.
NORSA, Cesare, b. 1831.
OLIVECRONA, Samuel Rodolphe Detlev Canut de, b. 1817.
PARIEU, Marie Louis Pierre Félix Esquirou de, b. 1815.
PIERANTONI, Augusto, b. 1840.
PRADIER-FODÉRÉ, Paul Louis Ernest, b. 1826.
RENAULT, Louis, b. 1843.
RIVIER, Alphonse Pierre Octave, b. 1835.
ROLIN, Albéric, b. 1843.
ROLIN JAEQUEMYS, Gustave, b. 1835.
SARIPOLOS, Nicolas Jean, b. 1817.
SCHULZE, Hermann, b. 1824.

STEIN, Lorenz von, b. 1813.
 TWISS, Sir Travers, b. 1810.
 WESTLAKE, John, b. 1828.
 WHARTON, Francis, b. 1820.
 WOOLSEY, Theodore Dwight, b. 1801.

ASSOCIATES.

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 BAKER, Sir Sherston, b. 1846.
 BROCHER DE LA FLÉCHÈRE, Henri, b. 1835.
 CARLE, Giuseppe, b. 1849.
 CARNAZZA-AMARI, Giuseppe, b. 1840.
 CLÈRE, Jules, b. 1850.
 DANIEWSKY, Wsevolod, b. 1851.
 DEN BEER POORTUGAEL, Jacobus, b. 1832.
 DICEY, A. V.
 DILLON, J. F.
 GABBA, Carlo Francesco, b. 1838.
 GRÜNHUT, Karl Samuel, b. 1844.
 HANNEN, Sir James, b. 1821.
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 LEHR, Paul Ernest, b. 1835.
 LE TOUZÉ, Charles Adolphe, b. 18
 LOMONACO, Giovanni, b. 1848.
 LYON-CAEN, Charles Léon, b. 1843.
 LÖNNING, Edgar.
 MARTENS-FERRAO, Jean-Baptiste.
 MARTIN, W. A. P.
 MARTITZ, Ferdinand Karl Ludwig von, b. 1839.
 MEIER, Ernst, b. 1832.
 MONTLUC, Leon Pierre de, b. 1847.
 NYS, Ernest, b. 1851.
 PERELS.
 PETERSEN-STUDNITZ, Alexis, b. 1846.
 PRINS, Adolphe, b. 1849.
 REAY, Donald James Mackay, Lord, b. 1839.
 ROSZKOWSKI, Gustave, b. 1847.
 SACERDOTI, Adolfo, b. 1844.
 TEICHMANN, Albert, b. 1847.
 WALLACE, Mackenzie, b. 1841.

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